IN THE

Supreme Court of the United States

OCTOBER TERM, 1948.

No.

CLAYTON MARK & COMPANY, ET AL.,
Petitioners,

vs.

FEDERAL TRADE COMMISSION,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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In the

United States Circuit Court of Appeals

For the Seventh Circuit

No. 8642

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No. 8640 ENAMELED METALS COMPANY, ET AL.,
No. 8642 CLAYTON MARK & COMPANY, ET AL.,
No. 8644 GENERAL ELECTRIC COMPANY, ET AL.,
No. 8649 SPANG CHALFANT, INC., ET AL.,

Petitioners,

vs.

FEDERAL TRADE COMMISSION,

Respondent.

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1 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION, ss:

In the Matter of:
Rigid Steel Conduit Association, *et al.* } Docket No. 4452.

I, Otis B. Johnson, Secretary of the Federal Trade Commission and official custodian of its records, do hereby certify that transmitted herewith is a full, true, and complete transcript of proceedings had before the Federal Trade Commission in the above entitled matter, consisting of:

Part 1. Pleadings (1-25-41 to 12-9-41, incl.)
Part 2. Pleadings (12-10-41 to 6-6-44, incl.)
Part 3. Testimony (Pages 1 to 950, incl.)
Part 4. Testimony (Pages 951 to 2020, incl.)
Part 5. Testimony (Pages 2021 to 3035, incl.)
Part 6. Testimony (Pages 3036 to 4198, incl.)
Part 7. Testimony (Pages 4199 to 5391, incl.)
Part 8. Testimony (Pages 5392 to 6629, incl.)
Part 9. Exhibits (Comm. Ex. 1 to 50, incl.)
Part 10. Exhibits (Comm. Ex. 51 to 55, incl.)
Part 11. Exhibits (Comm. Ex. 56 to 62, incl.)
Part 12. Exhibits (Comm. Ex. 63 to 70, incl.)
Part 13. Exhibits (Comm. Ex. 71 to 73, incl.)
Part 14. Exhibits (Comm. Ex. 74 to 76, incl.)
Part 15. Exhibits (Comm. Ex. 77 to 79, incl.)
Part 16. Exhibits (Comm. Ex. 80 to 82, incl.)
Part 17. Exhibits (Comm. Ex. 83 to 299, incl.)
Part 18. Exhibits (Comm. Ex. 300 to 474, incl.)
Part 19. Exhibits (Comm. Ex. 475 to 627, incl.)
Part 20. Exhibits (Comm. Ex. 628 to 715, incl.)
Part 21. Exhibits (Comm. Ex. 716 to 767, incl.)
Part 22. Exhibits (Resp. Ex. 1 to 154, incl.)
Part 23. Exhibits (Resp. Ex. 155 to 271, incl.)
Part 24. Exhibits (Resp. Ex. 272 to 334, incl.)

and separate original exhibits marked:

2-1	2-2	2-3	2-4	2-5	2-6	2-7
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2 That Commission Exhibit 75-H, Freight Rate Bulletin of Triangle Conduit & Cable Company, was lost while in custody of Attorney C. H. Calhoun, Jr., now absent in military service, and that extensive efforts to locate the exhibit have been unsuccessful.

That also transmitted herewith is a full, true, and complete copy of the Trial Examiner's Report and Exceptions related to this proceeding.

That this transcript and Trial Examiner's Report and Exceptions are certified to the United States Circuit Court of Appeals for the Seventh Circuit, pursuant to the filing in said Court of a petition for review of an Order to Cease and Desist, dated June 6, 1944, entered by the Federal Trade Commission in the above indicated proceeding.

In Witness Whereof, I hereunto subscribe my name, and affix the seal of the said Federal Trade Commission, at its office in the City of Washington, D. C., this 26th day of October, A. D. 1944.

Otis B. Johnson,
Secretary.

(Seal)

3 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

In the Matter of:
Rigid Steel Conduit Association, *et al.* } Docket No. 4452.

6 COMPLAINT.

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission having reason to believe that the persons, partnerships, corporations and associations named or included by reference in the caption hereof and more particularly hereinafter described and referred to as respondents, have violated the provisions of Section 5 of the said Act; and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint against each of said parties, stating its charges in that respect as follows:

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Count I.

Paragraph One: Respondent Rigid Steel Conduit Association is an unincorporated trade association with its offices and principal place of business located at 17 East 42nd Street, in the City of New York, N. Y. It was formed in 1934 to promote the interests of its members and has since that time included among its membership manufacturers of rigid steel conduit including respondents Central Tube Company, Enamelled Metals Company, Fretz-Moon Tube Company, Inc., Gariand Manufacturing Company, General Electric Company, General Electric Supply Corporation, Clayton Mark & Company, Steelduct Company, Walker Brothers, Youngstown Sheet and Tube Company, Cohoes Rolling Mill Company, Laclede Steel Company, Laclede Tube Company, Triangle Conduit and Cable Company, Inc. Said respondent members manufacture substantially all rigid steel conduit produced in the United States. Until about June 1, 1940, the said respondent members made use of the offices and other facilities of said respondent Rigid Steel Conduit Association for actively advising, assisting and cooperating with all members of that association and others in the industry in furtherance of the unlawful acts, things, practices and methods hereinafter set forth.

Respondent Herbert S. Blake at various times during the six years last past has as its president directed the affiairs of the respondent Rigid Steel Conduit Association, 17 East 42nd Street, in the City of New York, N. Y.

7 Respondent Lawrence R. Quinn at various times during the six years last past functioned as treasurer and a member of the board of directors of respondent Rigid Steel Conduit Association, 17 East 42nd Street, in the City of New York, N. Y., and is vice-president of respondent Enamelled Metals Company, Etna, Pennsylvania.

Respondent Paul Weiss at various times during the six years last past functioned as assistant treasurer of respondent Rigid Steel Conduit Association, 17 East 42nd Street, in the City of New York, N. Y.

Respondent Robert S. Booth at various times during the six years last past has functioned as executive secretary of respondent Rigid Steel Conduit Association, 17 East 42nd Street, in the City of New York, N. Y. He succeeded one George H. Sicard who served as executive secretary of

respondent Rigid Steel Conduit Association from the time of its formation in 1934 for a period of approximately two years.

Respondent I. A. Bennett is chairman of the board of directors of the respondent Rigid Steel Conduit Association, 17 East 42nd Street, in the City of New York, N. Y., and vice-president of respondent National Electric Products Corporation, Fulton Building, Pittsburgh, Pennsylvania.

Respondent J. M. Barton is a member of the board of directors of the respondent Rigid Steel Conduit Association and president of respondent Fretz-Moon Tube Company, Butler, Pennsylvania.

Respondent H. G. Morrow is a member of the board of directors of respondent Rigid Steel Conduit Association, 17 East 42nd Street, in the City of New York, N. Y., and vice-president of respondent Central Tube Company, First National Bank Building, in the City of Pittsburgh, Pennsylvania.

Respondent H. S. Walker is a member of the board of directors of respondent Rigid Steel Conduit Association, 17 East 42nd Street, in the City of New York, N. Y., and president of respondent Walker Brothers, Conshohocken, Pennsylvania.

Respondent A. E. Newman is a member of the board of directors of respondent Rigid Steel Conduit Associa-
8 tion, 17 East 42nd Street, in the City of New York, N. Y., and manager of the Wiring Materials Sales Division of respondent General Electric Company, and in that capacity also serves respondent General Electric Supply Corporation, 1285 Boston Avenue, Bridgeport, Connecticut.

Respondent Central Tube Company is a corporation organized and existing under the laws of the State of Pennsylvania with its principal office and place of business located in the First National Bank Building, in the City of Pittsburgh, Pennsylvania. It manufactures rigid steel conduit and sells and distributes the same to and through jobbers, wholesalers, and others through the United States.

Respondent Clayton Mark & Company is a corporation organized and existing under the laws of the State of Delaware with its principal office and place of business located at 1900 Dempster Street, in the City of Evanston, Illinois. It manufactures rigid steel conduit and sells and

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distributes the same through jobbers and wholesalers throughout the United States.

Respondent Cohoes Rolling Mill Company is a corporation organized and existing under the laws of the State of New York with its principal office and place of business located in the City of Cohoes, N. Y. It manufacturers rigid steel conduit and sells and distributes the same to and through jobbers, wholesalers, and others throughout the United States.

Respondent Enamelled Metals Company is a corporation organized and existing under the laws of the State of Pennsylvania with its principal office and place of business located in the City of Etna, Pennsylvania. It manufactures rigid steel conduit and sells and distributes the same to and through jobbers, wholesalers, and others throughout the United States.

Respondent Fretz-Moon Tube Company, Inc., is a corporation organized and existing under the laws of the State of Pennsylvania with its principal office and place of business located in the City of Butler, Pennsylvania. It is 50% owned by respondent Republic Steel Corporation and is engaged in the manufacture of rigid steel conduit which it causes to be sold and distributed through its
9 sales agent, the respondent Steel and Tubes, Inc., 200 East 131st Street, in the City of Cleveland, Ohio, which is 100% owned by respondent Republic Steel Corporation.

Respondent Garland Manufacturing Company is a corporation organized and existing under the laws of the State of Pennsylvania with its office and principal place of business located in the City of Pittsburgh, Pennsylvania. It manufactures rigid steel conduit and sells and distributes the same to and through jobbers, wholesalers and others throughout the United States.

Respondent General Electric Company is a corporation organized and existing under the laws of the State of New York with its office and principal place of business located on River Road, in the City of Schenectady, N. Y. It manufactures conduit and sells and distributes the same to jobbers and others throughout the United States directly and through its subsidiary, the respondent General Electric Supply Corporation, 1285 Boston Avenue, in the City of Bridgeport, Connecticut.

Respondent Laclede Steel Company and respondent Laclede Tube Company are corporations organized and

existing under the laws of the State of Missouri with their principal offices and place of business located in the Arcade Building, in the City of St. Louis, Missouri. The respondent Laclede Steel Company several years ago acquired the assets, ownership and business of the Laclede Tube Company, a Delaware corporation, which had maintained membership in respondent Rigid Steel Conduit Association, and which was engaged in conduit manufacture and sale to jobbers and others throughout the United States, prior to 1938. The respondent Laclede Steel Company has also maintained membership in said respondent Rigid Steel Conduit Association. At that time respondent Laclede Steel Company dissolved the Laclede Tube Company, a Delaware Corporation, and immediately formed as a nominal corporation the respondent Laclede Tube Company, a Missouri corporation, for the purpose of preserving its corporate name.

Respondent National Electric Products Corporation is a corporation organized and existing under the laws of the State of Pennsylvania with its principal office and place of business located in the Fulton Building, in the City of Pittsburgh, Pennsylvania. It manufactures rigid steel conduit and sells and distributes the same to and through jobbers, wholesalers, and others throughout the United States.

The respondent Steelduct Company is a corporation organized and existing under the laws of the State of Ohio with its principal office and place of business located in the Republic Steel Building, 335 Market Street in the City of Youngstown, Ohio. It manufactures rigid steel conduit and sells and distributes the same to and through jobbers, wholesalers and others throughout the United States.

Respondent Triangle Conduit and Cable Company, Inc., is a corporation organized and existing under the laws of the State of New York with its principal office and place of business located at Horace Harding and Queens Boulevards, Elmhurst, N. Y. It manufactures rigid steel conduit and sells and distributes the same to and through jobbers, wholesalers, and others throughout the United States.

Respondent Walker Brothers is a corporation organized and existing under the laws of the State of Pennsylvania with its principal office and place of business located in

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the City of Conshohocken, Pennsylvania. It manufactures rigid steel conduit and sells and distributes the same to and through jobbers, wholesalers, and others throughout the United States.

Respondent Youngstown Sheet and Tube Company is a corporation organized and existing under the laws of the State of Ohio with its principal office and place of business located in the Stambaugh Building in the City of Youngstown, Ohio. It manufactures rigid steel conduit and sells and distributes the same to and through jobbers, wholesalers and others throughout the United States.

The respondents Spang Chalfant, Inc., Steel and Tubes, Inc., the M. B. Austin Company, and George L. Hatheway, Regina G. Hatheway, Katherine R. Hatheway, and Jane Hatheway, partners trading as Clifton Conduit Company, have cooperated with and assisted the members of the said respondent Rigid Steel Conduit Association
11 in using and otherwise furthering the unlawful acts, things, practices and methods hereinafter set forth.

Respondent Spang Chalfant, Inc., is a corporation organized and existing under the laws of the State of Pennsylvania with its principal office and place of business located in the Grant Building in the City of Pittsburgh, Pennsylvania. It manufactures rigid steel conduit and sells and distributes the same to and through jobbers, wholesalers, and others throughout the United States.

Respondent Steel and Tubes, Inc., is a corporation organized and existing under the laws of the State of Ohio with its principal office and place of business located at 200 East 131st Street in the City of Cleveland, Ohio. It sells and distributes to and through wholesalers, jobbers, and others throughout the United States conduit manufactured by the respondent Fretz-Moon Tube Company, Inc.

Respondent The M. B. Austin Company is a corporation organized and existing under the laws of the State of Illinois with its office and principal place of business located at 108 South Desplaines Street, in the City of Chicago, Illinois. It sells and distributes to and through wholesalers, jobbers, and others throughout the United States rigid steel conduit which it causes to be manufactured for it by the respondent Triangle Conduit and Cable Company, Inc.

Respondents George L. Hatheway, Regina G. Hatheway,

Katherine R. Hatheway, and Jane Hatheway are company partners, operating and trading under the name and style of Clifton Conduit Company with their offices and principal place of business located at 75 Montgomery Street, Jersey City, New Jersey. They sell and distribute to wholesalers, jobbers, and others throughout the United States rigid steel conduit which they cause to be manufactured for them by the respondent General Electric Company.

Respondent General Electric Supply Corporation is a corporation organized and existing under the laws of the State of Delaware with its offices and principal place of business located (in so far as such business relates to conduit manufacture and sale) at 1285 Boston Avenue, in the City of Bridgeport, Connecticut. It assists and co-operates with its parent corporation, the respondent General Electric Company, in promoting and furthering the unlawful things, practices and methods hereinafter set forth.

Respondent Republic Steel Corporation is a corporation organized and existing under the laws of the State of New Jersey with its office and principal place of business located in the Republic Steel Building, 335 Market Street, in the City of Youngstown, Ohio. It owns 50 percent of the capital stock in the respondent Fretz-Moon Tube Company, Inc., and all of the outstanding capital stock in respondent Steel and Tubes, Inc., and controls, assists and cooperates in the activities of said respondent Steel and Tubes, Inc. Said respondent Republic Steel Corporation in that manner and otherwise cooperates with the respondents in promoting and furthering the unlawful acts, things, practices and methods hereinafter set forth.

The respondents Central Tube Company, Clayton Mark & Company, Cohoes Rolling Mill Company, Enamelled Metals Company, Fretz-Moon Tube Company, Inc., Garland Manufacturing Company, General Electric Company, General Electric Supply Corporation, Laclede Steel Company, Laclede Tube Company, National Electric Products Corporation, Steelduct Company, Triangle Conduit and Cable Company, Inc., Walker Brothers, Youngstown Sheet and Tube Company, Spang Chalfant, Inc., Steel and Tubes, Inc., Republic Steel Corporation, The M. B. Austin Company, George L. Hatheway, Regina G. Hatheway, Katherine R. Hatheway, and Jane Hatheway, partners trading as the Clifton Conduit Company, more particularly named and described in the immediately preceding sub-paragraphs

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in this Paragraph One will for the sake of brevity and convenience hereinafter be referred to collectively merely as respondent "conduit sellers".

Respondent Charles Donley has during the six years last past served as adviser to and traffic manager for shippers and their trade associations including respondent Rigid Steel Conduit Association and respondent members thereof in connection with preparation and distribution of compilations of freight factors or "adders" for use in
13 calculating delivered price quotations. His office and principal place of business is located in the Dravo Building in the City of Pittsburgh, Pennsylvania.

Respondent Frank C. Hodkinson during the six years last past has served as a member of committees of the respondent Rigid Steel Conduit Association and also attended and participated in numerous meetings of the members of the Rigid Steel Conduit Association as a representative of the American Circular Loom Company, 205 East 42nd Street in the City of New York, N. Y., a wholly owned subsidiary of the respondent National Electric Products Corporation, the present address of which is Fulton Building, in the City of Pittsburgh, Pennsylvania.

The aforesaid respondent "conduit sellers" have for a substantial period of time during the six years last past engaged in the manufacture of rigid steel conduit or caused it to be manufactured and shipped for them from the following locations: Central Tube Company, Pittsburgh, Pa.; Clayton Mark & Company, Evanston, Ill.; Spang Chalfant, Inc., Pittsburgh, Pa.; Cohoes Rolling Mill Company, Cohoes, N. Y.; Enamelled Metals Company, Etna, Pa.; Fretz-Moon Tube Company, Inc., Butler, Pa.; Garland Manufacturing Company, West Pittsburgh (Lawrence County), Pa.; General Electric Company, New Kensington, Pa.; General Electric Supply Corporation, New Kensington, Pa.; Clifton Conduit Company, New Kensington, Pa.; Laclede Steel Company, St. Louis, Mo.; Laclede Tube Company, St. Louis, Mo.; National Electric Products Corporation, Pittsburgh, Pa.; the Steelduct Company, Youngstown, Ohio; Triangle Conduit and Cable Company, Inc., Moundsville, W. Va.; The M. B. Austin Company, Moundsville, W. Va.; Walker Brothers, Conshohocken, Pa.; Steel and Tubes, Inc., Butler, Pa.; Youngstown Sheet and Tube Company, Cleveland, Ohio, and Youngstown, Ohio, to their respective customers located in the states of the United States other than the states of

origin of such shipments. They sell and distribute principally through jobbers or wholesalers who buy and sell electrical supplies including conduit outright and on a consignment basis. Many such wholesalers or jobbers to whom they sell are members of respondent The National Electrical Wholesalers Association. Such wholesalers re-
sell principally to electrical contractors and to govern-
14 ment agencies. Each of said respondent "conduit sellers" has been, and is, in competition with one or more of the other respondent "conduit sellers" in making or seeking to make sales in commerce between and among the various states of the United States and in the District of Columbia, of rigid steel conduit except in so far as said competition has been hindered, lessened, restricted or forestalled, by the understanding, agreement, combination or conspiracy and acts, things, practices and methods done and carried on in pursuance thereto and in furtherance thereof as hereinafter set forth.

To the extent that they act collusively and collectively, or ingage in monopolistic practices in the production, price, or sale of rigid steel conduit respondent "conduit sellers" and respondent "conduit wholesalers" have been and are in a position to dominate and manipulate the price quotations which are made to unorganized purchasers of rigid steel conduit.

Paragraph Two: Respondent Organization Service Corporation is a corporation organized and existing under the laws of the State of New York with its principal office and place of business located at 74 Trinity Place in the City of New York, N. Y. It has served as organizer, manager, and director of and adviser to various trade associations including the respondent Rigid Steel Conduit Association and its members at various times during the six years last past.

Respondent Herbert S. Blake is president of the respondent Organization Service Corporation, with office and principal place of business located at 74 Trinity Place in the City of New York, N. Y.

Respondent Herbert S. Blake, Jr., is vice-president of the respondent Organization Service Corporation with office and principal place of business located at 74 Trinity Place in the City of New York, N. Y.

Respondent N. Myles Brown is vice-president of respondent Organization Service Corporation with office and

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principal place of business located at 74 Trinity Place, in the City of New York, N. Y.

15 Respondent Thomas B. Jordan is vice-president of respondent Organization Service Corporation with office and principal place of business located at 74 Trinity Place, in the City of New York, N. Y.

Respondent Paul Weiss is treasurer of respondent Organization Service Corporation with office and principal place of business located at 74 Trinity Place, in the City of New York, N. Y.

Respondent C. C. Gregory is secretary of the respondent Organization Service Corporation with office and principal place of business located at 74 Trinity Place in the City of New York, N. Y.

Said respondent Organization Service Corporation is not engaged in commerce, but it and its officers, employees and agents have during the six years last past aided, assisted, advised, managed, directed, and otherwise cooperated with respondent "conduit sellers" in carrying out the alleged unlawful acts, methods, policies, rules, and practices as hereinafter set forth in such manner as to directly and substantially hinder, suppress and lessen competition among such respondent "conduit sellers" who are engaged in commerce.

Paragraph Three: Respondent The National Electrical Wholesalers Association with principal place of business and offices located at 165 Broadway in the City of New York, N. Y., is an unincorporated trade association of numerous wholesalers and jobbers, who are located in the various states of the United States and who are engaged in the purchase and wholesale distribution of electrical supplies in interstate commerce, including rigid steel conduit.

Said respondent The National Electrical Wholesalers Association was organized for the ostensible purpose of promoting the interests of its members through the furthering of a closer relationship between and among them.

16 The names and addresses of the officers and other leaders of the said respondent National Electrical Wholesalers Association, who, as individuals, as such officers, and as representatives of its membership, are named as respondents herein, are: J. G. Johannesen, Chairman, c/o General Electric Supply Corporation, 585 Hudson

Street, New York, N. Y.; Alfred Byers, Secretary, c/o National Electrical Wholesalers Association, 165 Broadway, New York, N. Y.; L. E. Latham, Chairman of the Conduit Committee of National Electrical Wholesalers Association, c/o E. B. Latham & Company, 250 Fourth Avenue, New York, N. Y.; and D. L. Fife, c/o Fife Electric Supply Company, 541 E. Larned Street, Detroit, Mich.; W. S. Blue, c/o Columbian Electrical Company, 2603 Grand Avenue, Kansas City, Mo.; W. J. Drury, c/o Graybar Electric Company, Inc., 180 Varick Street, New York, N. Y.; A. H. Kahn, c/o General Electric Supply Corporation, 350 N. Ogden Avenue, Chicago, Ill.; C. H. McCullough, c/o W. T. McCullough Electric Company, 317 First Avenue, Pittsburgh, Pa.; H. E. Rasmussen, c/o Peerless Electric Supply Company, 122 South Meridian Street, Indianapolis, Ind.; H. O. Smith, c/o The Hardware and Supply Company, 475 High Street, Akron, Ohio; F. R. Eiseman, c/o Revere Electric Company, 757 West Jackson Blvd., Chicago, Ill.; W. R. Kiefer, c/o Kiefer Electrical Supply Company, 318 South Washington Street, Peoria, Ill.; H. B. Tompkins, c/o Westinghouse Electric Supply Company, 150 Varick Street, New York, N. Y.; A. L. Hallstrom, c/o Graybar Electric Company, Inc., 190 Cherry Street, Philadelphia, Pa.; A. S. Riechman, c/o F. D. Lawrence Electric Company, 217 West Fourth Street, Cincinnati, Ohio; D. M. Smith, c/o The C. S. Mersick and Company, 278 State Street, New Haven, Conn., members of the Conduit Committee of the National Electrical Wholesalers Association.

The membership of said respondent The National Electrical Wholesalers Association constitutes a class so numerous and changing as to make it impracticable to name as respondents each and all of such members without
17 manifest delay, inconvenience and much expense.

Therefore, the Commission names and includes as respondents in this proceeding the following:

1. General Electric Supply Corporation, a corporation organized and existing under the laws of the State of Delaware with its office and principal place of business located (insofar as such business relates to jobber distribution of "conduit") at 585 Hudson Street in the City of New York, N. Y.

2. E. B. Latham & Company, a corporation organized and existing under the laws of the State of New York with its office and principal place of business located at 250 Fourth Avenue in the City of New York, N. Y.

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3. Fife Electric Supply Company with office and principal place of business located at 541 E. Larned Street in the City of Detroit, Mich.

4. Columbian Electrical Company, 2603 Grand Avenue, Kansas City, Mo.

5. Graybar Electric Company, Inc., a corporation organized and existing under the laws of the State of New York with office and principal place of business located at 420 Lexington Avenue in the City of New York, N. Y.

6. W. T. McCullough Electric Company, with offices and principal place of business located at 317 First Avenue in the City of Pittsburgh, Pa.

7. Peerless Electric Supply Company with office and principal place of business located at 122 South Meridian Street in the City of Indianapolis, Ind.

8. The Hardware and Supply Company with office and principal place of business located at 475 South High
18 Street in the City of Akron, Ohio.

9. Revere Electric Company, a corporation organized and existing under the laws of the State of Illinois with office and principal place of business located at 757 W. Jackson Street in the City of Chicago, Ill.

10. Kiefer Electrical Supply Company, a corporation organized and existing under the laws of the State of Illinois with office and principal place of business located at 318 South Washington Street in the City of Peoria, Ill.

11. Westinghouse Electric Supply Company, a corporation organized and existing under the laws of the State of Delaware with office and principal place of business located at 150 Varick Street in the City of New York, N. Y.

12. F. D. Lawrence Electric Company with office and principal place of business located at 217 West Fourth Street in the City of Cincinnati, Ohio.

13. The C. S. Mersick and Company with office and principal place of business located at 278 State Street in the City of New Haven, Conn.

all of whom are hereinafter referred to as "respondent conduit wholesalers", individually and as representatives of all the members of respondent National Electrical Wholesalers Association.

Each of said respondent "conduit wholesalers" has been, and is in competition with one or more of the other respondent "conduit wholesalers" in making or seeking to

make sales of rigid steel conduit in commerce between and among the various states of the United States
19 and in the District of Columbia, except insofar as said competition has been hindered, lessened, restricted, or forestalled by the understanding, agreement, combination or conspiracy and acts, things, practices, and methods done and carried on in pursuance thereto and in furtherance thereof as hereinafter set forth.

Paragraph Four: Rigid steel conduit (hereinafter referred to merely as "conduit") is the commodity with which this proceeding is concerned. It is used as raceways specially constructed for the purpose of pulling in or withdrawing of wires or of cables after the conduit is in place. It is made of milled steel pipe that has been cleaned of scale and rust and been given enamelled, galvanized or metallic corrosion-resistant coatings. The galvanizing or enamelling is for the purpose of producing smooth surfaces so that when it is used as raceways for electric wiring such wiring may be drawn through it with facility and without injury to the wires. It is usually placed in large buildings as they are erected and the electric wiring is later drawn through the "conduit". In recent years, volumes exceeding 125,000 tons annually have been sold and distributed in the United States by the respondent "conduit sellers".

Paragraph Five: For more than six years last past, the respondents, acting between and among themselves, or through and by means of respondent Rigid Steel Conduit Association, or through and by means of respondents Organization Service Corporation, Herbert S. Blake, Herbert S. Blake, Jr., Thomas B. Jordan, Paul Weiss, C. C. Gregory, Robert S. Booth, George H. Sicard, Charles Donley, Frank C. Hodkinson and others, while they and others were acting in their official positions with respondent Rigid Steel Conduit Association or through and by means of cooperation with respondents National Electrical Wholesalers Association, its officers, employees, agents and members or by other means and methods, have entered into, and thereafter engaged in and carried out, and are still engaged in and carrying out, a wrongful and unlawful understanding, agreement, combination and conspiracy, for the purpose and with the effect of substantially
20 restricting, suppressing, eliminating, and frustrating actual and potential competition as to price, and other-

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wise, in the sale and distribution of "conduit" in trade and commerce between and among the various states of the United States and in the District of Columbia.

Paragraph Six: Pursuant to said understanding, agreement, combination and conspiracy, and in furtherance thereof, said respondents, acting in cooperation with each other and others not named herein as respondents, in the manner and by the methods herein set forth, have done and performed, and still do and perform, among other acts, things, practices and methods the following:

(1) Agreed to adopt, maintain and use and have adopted, maintained and used a basing point method or system in calculating and quoting prices on "conduit" to dealers, distributors and to certain users thereof, including various governmental agencies;

(2) Adopted and continued in effect, by agreement, understanding and concerted action among themselves, a price-fixing formula for ascertaining amounts or sums to be quoted to prospective purchasers as delivered costs of "conduit" to such prospective purchasers as destinations, whereby delivered price quotations of respondent "conduit sellers" and respondent "conduit wholesalers" have been and are uniform or identical as published to "conduit" users at any given destination by respondent "conduit sellers" and respondent "conduit wholesalers", and in that way have hindered and frustrated buyers and users of "conduit" from securing price quotations on such basis as would permit them to make purchases in disregard of and without relation to the uniform or identical delivered cost quotations presented them by respondent "conduit sellers" and respondent "conduit wholesalers";

21 (3) Agreed to adopt, and have adopted and maintained, a system of delivered price quotations designed to prevent, and which does prevent, reflection of any differences in the cost of freight delivery between the respective places of manufacture of respondent "conduit sellers" and the places of business of the intending purchasers of "conduit" and creation of any advantage or disadvantage to said purchasers in delivery costs which would otherwise result because of different locations of different purchasers and sellers.

(4) Agreed to adopt and have adopted and maintained, a plan whereby the United States is divided into so-called

Pittsburgh and Chicago basing point areas so that all purchasers within one or the other of those two areas, regardless of the distance of the place of business of said purchaser from the place of origin of shipments of "conduit" made to him or caused to be made to him by respondent "conduit sellers" and respondent "conduit wholesalers" receive at a given point of time uniform or identical delivered cost quotations on "conduit" from all said respondent "conduit sellers" and said respondent "conduit wholesalers".

(5) Agreed to adopt and have adopted, maintained and used through the cooperation and with the assistance of respondent Charles Donley, and otherwise, a cooperative system of preparing, calculating and circulating among themselves a compilation of common freight factors or "adders" from points designated as basing points for pricing purposes to various destinations in the several states of the United States in order to negative differences in the actual freight charges from actual shipping points to said destinations and in order to negative differences in the interpretations and applications of official freight tariffs from the basing points.

(6) Agreed to seek and secure and have sought and secured the advice, assistance, cooperation and management of respondent Organization Service Corporation, its officers, employees and agents, including respondent Herbert S. Blake, and others, in formulating, adopting, publishing and using uniform terms and conditions of sale which were embodied by respondent "conduit sellers" and respondent "conduit wholesalers" in consignment agency agreements, "protective" contracts covering special jobs and contracts with manufacturers' agents or dealers and other buyers;

(7) Agreed to adopt and have adopted, maintained and used uniform terms and conditions of sale which were embodied by respondent "conduit sellers" and respondent "conduit wholesalers" in consignment agency agreements, "protective" contracts covering special jobs and other contracts with manufacturers' agents, dealers and other buyers;

(8) Agreed to seek and secure and have sought and secured the advice, assistance and cooperation of respondent Organization Service Corporation, its officers, employees, and agents, including respondent Herbert S.

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Blake, and others in developing, adopting and using a method or system of espionage or investigation of "protective" special building contracts and other forms of contracts;

(9) Agreed to adopt, maintain and use and have adopted, maintained and used a method or system of
23 espionage or investigation of "protective" special building contracts and other forms of contracts;

(10) Agreed to seek and have sought and secured the advice, cooperation and assistance of respondent Organization Service Corporation, its officers, employees, and agents, including respondent Herbert S. Blake and others in the preparation, publication and use of uniform price quotation sheets and uniform business practices;

(11) Agreed to adopt, maintain and use and have adopted, maintained and used uniform price quotation sheets and uniform business practices;

(12) Agreed to adhere to their announced prices, terms and conditions of sale and have for substantial periods of time adhered to such prices, terms and conditions of sale without deviation until other prices, terms and conditions of sale were likewise quoted and published;

(13) Agreed and cooperated in defining and have defined what constitutes a "recognized" jobber or dealer and further cooperated and agreed in determining what individuals or firms should be recognized as jobbers or dealers and thereby entitled to purchase "conduit" at prices involving discounts and generally allowed to recognized jobbers and dealers.

(14) Agreed to and heve circulated lists of "recognized" jobbers and dealers;

(15) Agreed to adopt and have adopted and used uniform terms and conditions of sale providing for uniform discounts or other amounts to be allowed their respective dealers, jobbers, wholesalers or "agents";

24 (16) Agreed to act, and do act, concertedly to maintain said agreements;

(17) Agreed to waive in some instances to competitors their respective economic and competitive advantages due to location and efficiency in management and operation and to require in other instances that their respective purchasers pay greater sums than other purchasers for equal merchandise or goods in order that respondent "conduit sellers" may conform to the aforesaid agreements;

(18) Agreed to require by retaliatory pricing action and otherwise all firms and individuals engaged in the sale and distribution of "conduit" in commerce to conform to respondents' agreements;

(19) Agreed to hold, and have held, meetings from time to time under the auspices and supervision of respondent Organization Service Corporation, its officers, employees and agents, respondent Rigid Steel Conduit Association and respondent National Electrical Wholesalers Association. During the course of said meetings and at other times respondents Charles Donley, Organization Service Corporation, Rigid Steel Conduit Association and National Electrical Wholesalers Association, their officers, directors, employees, agents and members cooperated with and assisted the respondent "conduit sellers" their officers, directors, employees and agents and respondents "conduit wholesalers" their officers, employees and agents in furthering and carrying out the unlawful acts, practices and methods herein set forth.

Paragraph Seven: The acts, things, practices, methods and agreements of the respondents, as hereinbefore alleged, are all to the prejudice of actual and potential competitors of respondent "conduit sellers", respondent "conduit wholesalers" and of the public; have a dangerous tendency to, and have actually, hindered, suppressed, eliminated, frustrated and prevented competition in the sale of "conduit" in commerce, within the intent and meaning of the Federal Trade Commission Act; have the capacity and tendency to restrain unreasonably and have restrained unreasonably such commerce in said product; have a dangerous tendency to create in respondents a monopoly in the sale and distribution of said product and constitute unfair methods of competition and unfair acts and practices in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Count II.

Paragraph One: Respondents Central Tube Company; Clayton Mark & Company; Cohoes Rolling Mill Company; Enamelled Metals Company; Fretz-Moon Tube Company, Inc.; Garland Manufacturing Company; General Electric Company; Laclede Steel Company; Laclede Tube Company; National Electrict Products Corporation; Steelduct

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Company; Triangle Conduit and Cable Company, Inc.; Walker Brothers; Youngstown Sheet and Tube Company; General Electric Supply Corporation; Spang Chalfant, Inc.; Steel and Tubes, Inc.; Republic Steel Corporation; The M. B. Austin Company; George L. Hatheway, Regina G. Hatheway, Katherine R. Hatheway, and Jane Hatheway, partners trading as Clifton Conduit Company more particularly and fully described in Paragraph One of Count I hereof (hereinafter for the sake of brevity and convenience referred to collectively merely as respondent "conduit sellers") have for a period of several years last past and do now sell and manufacture, or cause to be manufactured and shipped for them rigid steel conduit (more particularly and fully described in Paragraph Four of Count I hereof and hereinafter referred to merely as "conduit") from the following locations: Pittsburgh, Pennsylvania; Evanston, Illinois; Cohoes, New York, Etna, Pennsylvania; Butler, Pennsylvania; West Pittsburgh, Pennsylvania; St. Louis, Missouri; Youngstown, Ohio; Cleveland, Ohio; Moundsville, West Virginia, and
26 Conshohocken, Pennsylvania, to their respective customers located in the several states of the United States other than the states of origin of such shipments. In the course of such business they are in competition with each other, except to the extent such competition has been hindered, restrained, lessened, suppressed, frustrated, eliminated or prevented by the acts, things, practices and methods hereinafter set forth.

Paragraph Two: Each said respondent "conduit seller", with knowledge that the other said respondent "conduit sellers" simultaneously do likewise, generally refrains from quoting f.o.b. its place of production or shipments, prices that are independent of and unrelated to delivered price quotations determined from a basing point formula. Each said respondent "conduit seller" in arriving at the sums or amounts quoted in their respective published price cards or published price sheets, at a given point of time specify that delivered costs to any intending purchaser at his destination shall be the figure resulting from the use of a formula made up of a so-called basing point price, plus freight "adders" or factors specified in supplements to such price cards or sheets and applying from one or more specified basing points, irrespective of whether shipment is to be made or is made from such bas-

ing points or some other locations from which other and different freight factors actually apply. Since each respondent "conduit seller" uses the formula to quote delivered prices at a given point of time to customers at a given destination, uniformity in the delivered price quotations of all said respondent "conduit sellers" for such given time and destination is inherent in, and a necessary result of, such method or system of basing-point-delivered-price-quotations.

Paragraph Three: Each said respondent "conduit seller", notwithstanding differences between the actual freight rates from its place of business and manufacture and the rates from its competitors' places of business, habitually and systematically demands, charges, ac-
27 cepts and receives as an incident to the aforesaid basing point method of delivered price quotations, larger sums and amounts for products of equal quality and quantity from their respective customers located at or near their respective places of business and manufacture than from other customers located at greater distances, and thereby causes such nearby customers to pay more to each said respondent "conduit seller" for "conduit", and the more distant customers within and without a particular basing point area to pay less, than would otherwise be the case; thsu depriving the nearby customers of each said respondent "conduit seller" of price advantages which they would naturally enjoy by reason of their proximity to points of production.

Paragraph Four: The acts, practices and methods of each said respondent "conduit seller", as described in Paragraph Two and Paragraph Three of Count II hereof (when so done and used and with the results therein described) are all to the prejudice of the public; have a dangerous tendency to, and have actually, hindered, restrained, lessened, suppressed, frustrated, eliminated and prevented competition in price in the sale of "conduit" in commerce within the intent and meaning of the Federal Trade Commission Act; have the capacity and tendency to restrain unreasonably, and have unreasonably restrained, such commerce in said product; have a dangerous tendency to create in each of said respondent "conduit sellers" a monopolistic control over price in the sale and distribution of "conduit"; cause substantial unfair and discriminatory treatment among the customers of each said re-

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spondent "conduit seller" and therefore constitute unfair methods of competition in commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Wherefore, The Premises Considered, the Federal Trade Commission on this 25th day of January, A. D., 1941, hereby issues its complaint against said respondents.

Notice.

Notice is hereby given you, Rigid Steel Conduit Association, Herbert S. Blake, Lawrence R. Quinn, Paul Weiss, Robert S. Booth, I. A. Bennett, J. M. Barton, H. G.
28 Morrow, H. S. Walker, A. E. Newman, Central Tube Company, Clayton Mark & Company, Cohoes Rolling Mill Company, Enamelled Metals Company, Fretz-Moon Tube Company, Inc., Garland Manufacturing Company, General Electric Company, Laclede Steel Company, Laclede Tube Company, National Electric Products Corporation, Steelduct Company, Triangle Conduit and Cable Company, Inc., Walker Brothers, Youngstown Sheet and Tube Company, General Electric Supply Corporation, Spang Chalfant, Inc., Steel and Tubes, Inc., Republic Steel Corporation, The M. B. Austin Company; George L. Hatheway, Regina G. Hatheway, Katherine R. Hatheway, and Jane Hatheway, partners trading as Clifton Conduit Company; Charles Donley, Frank C. Hodkinson, Organization Service Corporation, Robert S. Blake, Jr., N. Myles Brown, Thomas B. Jordan, C. C. Gregory, The National Electrical Wholesalers Association, J. G. Johannesen, D. L. Fife, Alfred Byers, W. S. Blue, W. J. Drury, A. H. Kahn, C. H. McCullough, H. E. Rasmussen, H. O. Smith, L. E. Latham, F. R. Eiseman, W. R. Kiefer, H. B. Tompkins, A. L. Hallstrom, A. S. Riechman, D. M. Smith, E. B. Latham & Company, Fife Electric Supply Company, Columbian Electrical Company, Graybar Electric Company, Inc., W. T. McCullough Electric Company, Peerless Electric Supply Company, The Hardware and Supply Company, Revere Electric Company, Kiefer Electrical Supply Company, Westinghouse Electric Supply Company, F. D. Lawrence Electric Company, The C. S. Mersick and Company, respondents herein, that the 28th day of February, A. D., 1941, at 2 o'clock in this afternoon, is hereby fixed as the time, and the offices of the Federal Trade Commission in

the City of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you will have the right, under said Act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violations of the law charged in the complaint.

You are notified and required, on or before the twentieth day after service upon you of this complaint, to file with the Commission an answer to the complaint. If answer is filed and if your appearance at the place and on the date above stated be not required, due notice to that effect
29 will be given you. The Rules of Practice adopted by the Commission with respect to answers or failure to appear or answer (Rule IX) provide as follows:

In case of desire to contest the proceeding the respondent shall, within twenty (20) days from the service of the complaint, file with the Commission an answer to the complaint. Such answer shall contain a concise statement of the facts which constitute the ground of defense. Respondent shall specifically admit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state.

* * * * *

Failure of the respondent to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission, without further notice to respondent, to proceed in regular course on the charges set forth in the complaint.

If respondent desires to waive hearing on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondent admits all the material allegations of fact charged in the complaint to be true. Respondent by such answer shall be deemed to have waived a hearing on the allegations of fact set forth in said complaint and to have authorized the Commission, without further evidence, or other intervening procedure, to find such facts to be true, and if in the judgment of the Commission such facts
30 admitted constitute a violation of law or laws as charged in the complaint, to make and serve findings as to the facts and an order to cease and desist from such violations. Upon application in writing made contemporaneously with the filing of such answer, the respondent,

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in the discretion of the Commission, may be heard on brief, in oral argument, or both, solely on the question as to whether the facts so admitted constitute the violation or violations of law charged in the complaint.

In Witness Whereof, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 25th day of January, A. D., 1941.

By the Commission.

Otis B. Johnson,
Secretary.

(Seal)

44 UNITED STATES OF AMERICA,

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—4452) * *

Now comes the respondent, Lawrence R. Quinn, and for answer to the Complaint herein says:

First: Respondent is advised by counsel, believes and therefore avers that Count I of the Complaint filed herein is so vague, indefinite and contradictory that respondent is unable to properly answer the same and said Complaint in this respect therefore does not afford respondent the opportunity to answer the same to which he is entitled according to due process of law under the Constitution of the United States.

Second: Respondent is informed by counsel, believes and therefore avers that Count II of the Complaint does not fairly and sufficiently apprise respondent of the nature of the charges against him and hence constitutes lack of the due process of law required under the Constitution of the United States.

Third: Respondent is informed by counsel, believes and therefore avers that Count II of the Complaint relates solely to matters of an economic nature and does not set forth facts constituting in whole or in part unfair methods of competition in commerce or unfair or deceptive acts or practices in commerce and that therefore
45 the matters to which Count II relates are not within the jurisdiction of the Federal Trade Commission under Section 5 of the Federal Trade Commission Act.

For further answer to the Complaint filed herein and to each Count, paragraph and sub-paragraph thereof, respondent avers that he did not have any understanding, agreement, combination or conspiracy with any other respondents, nor did he cooperate with the other respondents or others not named to do the acts, things, practices and methods alleged in the Complaint, nor has respondent either alone or in conjunction with any other individual or individuals, corporation or corporations, or any other type of business entity, caused competition to have been hindered, lessened, restricted or forestalled in any branch or form of the rigid steel conduit industry. Further answering the Complaint, respondent says:

Count I.

1. Respondent denies the averments of Paragraph One as stated. Rigid Steel Conduit Association is not an unincorporated trade association nor has it any officers. To the contrary, because of its inability to carry out its dominant purpose and for reasons beyond the control of its members, said Association was dissolved on June 1, 1940. Prior thereto, to-wit, about April 1, 1939, said Association discontinued commercial activities entirely and confined its activities to technical problems. Said Association was not formed in 1934. To the contrary it had been in existence for many years prior to 1934. The dominant purpose
46 of said Association was to gather trade statistics of past and closed transactions and to prevent the occurrence of destructive and illegal practices by those engaged in the business of distributing the products of the conduit manufacturing industry. Neither the Association nor its members has undertaken to fix prices or to engage in transactions in violation of Section 5 of the Federal Trade Commission Act, or to do any other act or thing, either singly or in concert, violative of the law. Respondent avers that the dissolution of the Association was brought about involuntarily and by its inability to accomplish the dominant purpose of its formation and that there is neither a possibility nor a probability that the Association will be revived and hence a cease and desist order would be against a defunct and non-existent Association. Respondent is advised by counsel, believes and therefore avers that all matters covered in Count I of the Complaint

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are academic and hence do not present a matter within the jurisdiction of the Federal Trade Commission.

Respondent admits Herbert S. Blake was President of said Rigid Steel Conduit Association from November 1937 until April 1939, but denies that he directed the affairs of said Association. To the contrary said Blake acted as counsel to said Association and his election to the presidency was a matter of convenience. The affairs of said Association were always under the direction of its Board of Directors.

Except as to Enameled Metals Company, the identification of which is admitted, respondent has not sufficient knowledge to enable him to answer regarding the facts
47 averred in the Complaint as to the identity of the other corporate and individual respondents but accepts the answers of said respective respondents in this respect.

Respondent denies that he and the other respondents have engaged in or assisted and/or cooperated with each other in the alleged unlawful acts, etc., set forth in the Complaint. To the contrary respondent avers that neither he, nor other respondents so far as this respondent knows, has done anything unlawful, either singly or as a group, nor have they acted collusively and collectively, or engaged in monopolistic practices in the production, price, or sale of rigid steel conduit, nor have they manipulated the price quotations of rigid steel conduit nor have they violated Section 5 of the Federal Trade Commission Act.

2. Respondent does not know the personnel of Organization Service Corporation. Respondent denies that said corporation organized, managed and directed Rigid Steel Conduit Association and denies that said corporation aided, assisted, etc., in the alleged illegal practices as set forth in Paragraph Two and denies there were any such illegal practices.

3. Respondent is not sufficiently informed to enable him to answer the averments of Paragraph Three and hence denies the same.

4. The averments of Paragraph Four are admitted except that respondent avers that during the years covered by the Complaint, in only 1936, 1937 and 1939 was the
48 volume of rigid steel conduit sold and distributed in excess of 125,000 tons. In the other years the volume was less than 95,000 tons and during the entire period,

as respondent is informed, the conduit manufacturing industry operated at a loss.

5. The averments of Paragraph Five are conclusions of fact and law, as respondent is advised, and need not be answered but respondent denies the same as being without factual basis. Neither this respondent nor the other respondents have been, or are now, engaged in and carrying out a wrongful and unlawful understanding, agreement, combination and conspiracy, etc., as alleged in the Complaint.

6. Respondent avers in answer to Paragraph Six that there never was, nor is there now, an understanding, agreement, combination and/or conspiracy among respondents and others, as averred therein, to do the acts therein charged.

The matters charged in sub-paragraphs (1), (2), (3) and (4) and the conclusions thereof are denied. The basing point method and price formula, have been the trade practice of the rigid steel conduit industry for many years and are not the result of any agreement, understanding or concerted action among respondents, as averred in the Complaint.

The averments of sub-paragraph (5) are denied. Said Donley simply compiled freight rates on rigid steel conduit, which is done by every traffic department in the industry and can be done by any one familiar with Interstate Commerce Commission rate sheets. Said Donley never at any time, as respondent is informed, prepared
49 factors or adders for the respondent or the conduit manufacturing industry. Said factors or adders have no connection with any basing point price, nor with any basing point or other point, listed or unlisted, being merely a mathematical calculation showing the customer the amount of freight he would pay on any particular size of conduit at any particular freight rate.

The averments of sub-paragraphs (6) to (9), inclusive, are denied. Respondent, Enameled Metals Company and many of the other respondents had used consignment agency contracts long prior to the employment of Organization Service Corporation. The only change therein by Herbert S. Blake, Esq., as respondent believes, was to make the same technically uniform and primarily to make the same conform to the provisions of the Robinson-Patman Act. The "protective" contracts and other contracts

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had been in use for many years and the purpose of the same is to protect the buyer against an advance in price during the life of a building contract and as well to give him the advantage of any decline in price. Respondent denies that uniformity in terms and conditions of sale or of prices were agreed upon or maintained. Respondent denies there was a method or system of espionage employed. Respondent admits that special building contracts were checked to prevent fraudulent and discriminatory practices but avers that said checking was solely for the individual or firm requesting same, and the reports thereon were not made known to any other firm or individuals but solely to the firm or individual on whose behalf the checking was done.

Respondent denies the averments of sub-paragraph (10).

Respondent avers that the only uniformity in price
50 quotations was that resulting from the necessity of meeting competitors' published price sheets, and never resulted from agreement between respondents.

Respondent denies the averments of sub-paragraph (11).

Respondent denies the averments of sub-paragraph (12).

Respondent denies the averments of sub-paragraphs (13) to (16), inclusive.

Respondent is advised by counsel, believes and therefore avers that the averments of sub-paragraph (17) are too vague and indefinite to permit an answer. Respondent does not know of the "instances" nor the "economic and competitive advantages" therein averred and hence can not answer. Respondent has not made any such agreements and does not know of any such agreements on the part of other respondents.

Respondent denies the averments of sub-paragraph (18). Respondent made no such agreement nor does he know of other respondents making such agreements or taking such retaliatory action.

Respondent denies the averments of sub-paragraph (19). Respondent avers there was no such cooperation as alleged nor were there any unlawful acts, practices and methods.

7. Respondent is advised by counsel that the allegations of Paragraph Seven are conclusions and need not be answered but nevertheless denies the same.

51 Count II.

1. Respondent admits in answer to Paragraph One that respondent Enameled Metals Company manufactures and ships rigid steel conduit from Pittsburgh, Pennsylvania, in interstate commerce and admits that the various other respondents named are in competition with each other but denies that such competition has been hindered, restrained, etc., as averred in Paragraph One. Respondent is without sufficient knowledge as to the manner in which the other respondents carry on their business and hence denies the averments of Paragraph One. Respondent, however, will accept the answer of the respective respondents as to the manner and method by which they carry on their business.

2. Respondent denies the fact averments of Paragraph Two and the conclusion thereof. Respondent denies that each said respondent conduit seller, with knowledge that the other said respondent conduit sellers simultaneously do likewise, generally refrains from quoting F. O. B. its place of production or shipment, prices that are independent of and unrelated to delivered price quotations determined from a basing point formula. Respondent Enameled Metals Company quotes either F. O. B. mill or F. O. B. destination and sells many customers F. O. B. mill. Respondent does not know how other conduit sellers quote or sell.

3. The averments of Paragraph Three of the Complaint are argumentative and conclusions and are not factually correct and are denied.

4. The averments of Paragraph Four are denied.

52 Respondent further avers that the matter of basing point delivered price quotation is solely an economic problem and is not an unfair trade practice and hence is not within the jurisdiction of the Federal Trade Commission under Section 5 of the Federal Trade Commission Act.

5. Further answering the Complaint the respondent avers that the basing point delivered price quotation method has been used by the industry for upwards of twenty-five (25) years and is not the result of any combination or agreement, express or implied, between respondents. Respondent further avers that any conduit manufacturer is at liberty to establish a new basing point.

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Respondent avers that an abolition of said method will not be in the public interest but, to the contrary, by reason of the geographical locations of the manufacturing plants of the various manufacturing respondents, will result in the creation of monopolies within the industry or the over-expansion of productive capacity, either or both of which will not be in the public interest.

Wherefore, having answered the Complaint in fact and in law, respondent prays that it be dismissed.

Lawrence R. Quinn,
N. Denning Stewart,
By Stewart and Lewis.
His Counsel.

53 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—4452.) * *

Now comes the respondent, Enameled Metals Company, a corporation, and for answer to the Complaint herein says:

First: Respondent is advised by counsel, believes and therefore avers that Count I of the Complaint filed herein is so vague, indefinite and contradictory that respondent is unable to properly answer the same and said Complaint in this respect therefore does not afford respondent the opportunity to answer the same to which it is entitled according to due process of law under the Constitution of the United States.

Second: Respondent is informed by counsel, believes and therefore avers that Count II of the Complaint does not fairly and sufficiently apprise respondent of the nature of the charges against it and hence constitutes lack of the due process of law required under the Constitution of the United States.

Third: Respondent is informed by counsel, believes and therefore avers that Count II of the Complaint relates solely to matters of an economic nature and does not set forth facts constituting in whole or in part unfair methods of competition in commerce or unfair or deceptive acts or practices in commerce and that therefore

the matters to which Count II relates are not within
54 the jurisdiction of the Federal Trade Commission under Section 5 of the Federal Trade Commission Act.

For further answer to the Complaint filed herein and to each Count, paragraph and sub-paragraph thereof, respondent avers that it did not have any understanding, agreement, combination or conspiracy with any other respondents, nor did it cooperate with the other respondents or others not named to do the acts, things, practices and methods alleged in the Complaint, nor has respondent, either alone or in conjunction with any other individual or individuals, corporation or corporations, or any other type of business entity, caused competition to have been hindered, lessened, restricted or forestalled in any branch or form of the rigid steel conduit industry. Further answering the Complaint, respondent says:

Count I.

1. Respondent denies the averments of Paragraph One as stated. Rigid Steel Conduit Association is not an unincorporated trade association nor has it any officers. To the contrary, because of its inability to carry out its dominant purpose and for reasons beyond the control of its members, said Association was dissolved on June 1, 1940. Prior thereto, to-wit, about April 1, 1939, said Association discontinued commercial activities entirely and confined its activities to technical problems. Said Association was not formed in 1934. To the contrary it had been in existence for many years prior to 1934. The dominant purpose of said Association was to gather trade statistics of past and closed transactions and to prevent the occurrence of destructive and illegal practices by
55 those engaged in the business of distributing the products of the conduit manufacturing industry. Neither the Association nor its members has undertaken to fix prices or to engage in transactions in violation of Section 5 of the Federal Trade Commission Act, or to do any other act or thing, either singly or in concert, violative of the law. Respondent avers that the dissolution of the Association was brought about involuntarily and by its inability to accomplish the dominant purpose of its formation and that there is neither a possibility nor a probability that the Association will be revived and hence

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a cease and desist order would be against a defunct and non-existent Association. Respondent is advised by counsel, believes and therefore avers that all matters covered in Count I of the Complaint are academic and hence do not present a matter within the jurisdiction of the Federal Trade Commission.

Respondent admits Herbert S. Blake was President of said Rigid Steel Conduit Association from November 1937 until April 1939, but denies that he directed the affairs of said Association. To the contrary said Blake acted as counsel to said Association and his election to the presidency was a matter of convenience. The affairs of said Association were always under the direction of its Board of Directors.

Respondent has not sufficient knowledge to enable it to answer regarding the facts averred in the Complaint as to the identity of the other corporate and individual respondents but accepts the answers of said respective respondents in this respect.

56 Respondent denies that it and the other respondents have engaged in or assisted and/or cooperated with each other in the alleged unlawful acts, etc., set forth in the Complaint. To the contrary respondent avers that neither it, nor other respondents so far as this respondent knows, has done anything unlawful, either singly or as a group, nor have they acted collusively and collectively, or engaged in monopolistic practices in the production, price, or sale of rigid steel conduit, nor have they manipulated the price quotations of rigid steel conduit nor have they violated Section 5 of the Federal Trade Commission Act.

2. Respondent does not know the personnel of Organization Service Corporation. Respondent denies that said corporation organized, managed and directed Rigid Steel Conduit Association and denies that said corporation aided, assisted, etc., in the alleged illegal practices as set forth in Paragraph Two and denies there were any such illegal practices.

3. Respondent is not sufficiently informed to enable it to answer the averments of Paragraph Three and hence denies the same.

4. The averments of Paragraph Four are admitted except that respondent avers that during the years covered by the Complaint, in only 1936, 1937 and 1939 was the volume of rigid steel conduit sold and distributed in ex-

cess of 125,000 tons. In the other years the volume was less than 95,000 tons and during the entire period, as respondent is informed, the conduit manufacturing industry operated at a loss.

57 5. The averments of Paragraph Five are conclusions of fact and law, as respondent is advised, and need not be answered but respondent denies the same as being without factual basis. Neither this respondent nor the other respondents have been, or are now, engaged in and carrying out a wrongful and unlawful understanding, agreement, combination and conspiracy, etc., as alleged in the Complaint.

6. Respondent avers in answer to Paragraph Six that there never was, nor is there now, an understanding, agreement, combination and/or conspiracy among respondents and others, as averred therein, to do the acts therein charged.

The matters charged in sub-paragraphs (1), (2), (3) and (4) and the conclusions thereof are denied. The basing point method and price formula, have been the trade practice of the rigid steel conduit industry for many years and are not the result of any agreement, understanding or concerted action among respondents, as averred in the Complaint.

The averments of sub-paragraph (5) are denied. Said Donley simply compiled freight rates on rigid steel conduit, which is done by every traffic department in the industry and can be done by any one familiar with Interstate Commerce Commission rate sheets. Said Donley never at any time, as respondent is informed, prepared factors or adders for the respondent or the conduit manufacturing industry. Said factors or adders have no connection with any basing point price, nor with any basing point or other point, listed or unlisted, being merely a mathematical calculation showing the customer the amount of freight he would pay on any particular size of con-

58 duit at any particular freight rate.

The averments of sub-paragraphs (6) to (9), inclusive, are denied. This respondent and many of the other respondents had used consignment agency contracts long prior to the employment of Organization Service Corporation. The only change therein by Herbert S. Blake, Esq., as respondent believes, was to make the same technically uniform and primarily to make the same con-

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form to the provisions of the Robinson-Patman Act. The "protective" contracts and other contracts had been in use for many years and the purpose of the same is to protect the buyer against an advance in price during the life of a building contract and as well to give him the advantage of any decline in price. Respondent denies that uniformity in terms and conditions of sale or of prices were agreed upon or maintained. Respondent denies there was a method or system of espionage employed. Respondent admits that special building contracts were checked to prevent fraudulent and discriminatory practices but avers that said checking was solely for the individual or firm requesting same, and the reports thereon were not made known to any other firm or individuals but solely to the firm or individual on whose behalf the checking was done.

Respondent denies the averments of sub-paragraph (10). Respondent avers that the only uniformity in price quotations was that resulting from the necessity of meeting competitors' published price sheets, and never resulted from agreement between respondents.

Respondent denies the averments of sub-paragraph (11).

Respondent denies the averments of sub-paragraph (12).

59 Respondent denies the averments of sub-paragraphs (13) to (16), inclusive.

Respondent is advised by counsel, believes and therefore avers that the averments of sub-paragraph (17) are too vague and indefinite to permit an answer. Respondent does not know of the "instances" nor the "economic and competitive advantages" therein averred and hence can not answer. Respondent has not made any such agreements and does not know of any such agreements on the part of other respondents.

Respondent denies the averments of sub-paragraph (18). Respondent made no such agreement nor does it know of other respondents making such agreements or taking such retaliatory action.

Respondent denies the averments of sub-paragraph (19). Respondent avers there was no such cooperation as alleged nor were there any unlawful acts, practices and methods.

7. Respondent is advised by counsel that the allegations of Paragraph Seven are conclusions and need not be answered but nevertheless denies the same.

Count II.

1. Respondent admits in answer to Paragraph One that it manufactures and ships rigid steel conduit from Pittsburgh, Pennsylvania, in interstate commerce and admits that the various respondents named are in competition with each other but denies that such competition has been hindered, restrained, etc., as averred in Paragraph One.

Respondent is without sufficient knowledge as to the
60 manner in which the other respondents carry on their business and hence denies the averments of Paragraph One. Respondent, however, will accept the answer of the respective respondents as to the manner and method by which they carry on their business.

2. Respondent denies the fact averments of Paragraph Two and the conclusion thereof. Respondent denies that each said respondent conduit seller, with knowledge that the other said respondent conduit sellers simultaneously do likewise, generally refrains from quoting F. O. B. its place of production or shipment, prices that are independent of and unrelated to delivered price quotations determined from a basing point formula. Respondent quotes either F. O. B. mill or F. O. B. destination and sells many customers F. O. B. mill. Respondent does not know how other conduit sellers quote or sell.

3. The averments of Paragraph Three of the Complaint are argumentative and conclusions and are not factually correct and are denied.

4. The averments of Paragraph Four are denied. Respondent further avers that the matter of basing point delivered price quotation is solely an economic problem and is not an unfair trade practice and hence is not within the jurisdiction of the Federal Trade Commission under Section 5 of the Federal Trade Commission Act.

5. Further answering the Complaint the respondent avers that the basing point delivered price quotation
61 method has been used by the industry for upwards of twenty-five (25) years and is not the result of any combination or agreement, express or implied, between respondents. Respondent further avers that any conduit manufacturer is at liberty to establish a new basing point. Respondent avers that an abolition of said method will not be in the public interest but, to the contrary, by reason of the geographical locations of the manufacturing

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plants of the various manufacturing respondents, will result in the creation of monopolies within the industry or the over-expansion of productive capacity, either or both of which will not be in the public interest.

Wherefore, having answered the Complaint in fact and in law, respondent prays that it be dismissed.

Enameled Metals Company,
N. Denning Stewart,
By Stewart and Lewis,
Its Counsel.

62 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—4452.) * *

Now comes the respondent, Steelduct Company, a corporation, and for answer to the Complaint herein says:

First: Respondent is advised by counsel, believes and therefore avers that Count I of the Complaint filed herein is so vague indefinite and contradictory that respondent is unable to properly answer the same and said Complaint in this respect therefore does not afford respondent the opportunity to answer the same to which it is entitled according to due process of law under the Constittuion of the United States.

Second: Respondent is informed by counsel, believes and therefore avers that Count II of the Complaint does not fairly and sufficiently apprise respondent of the nature of the charges against it and hence constitutes lack of the due process of law required under the Constitution of the United States.

Third: Respondent is informed by counsel, believes and therefore avers that Count II of the Complaint relates solely to matters of an economic nature and does not set forth facts constituting in whole or in part unfair
63 methods of competition in commerce or unfair or deceptive acts or practices in commerce and that therefore the matters to which Count II relates are not within the jurisdiction of the Federal Trade Commission under Section 5 of the Federal Trade Commission Act.

For further answer to the Complaint filed herein and

to each Count, paragraph and sub-paragraph thereof, respondent avers that it did not have any understanding, agreement, combination or conspiracy with any other respondents, nor did it cooperate with the other respondents or others not named to do the acts, things, practices and methods alleged in the Complaint, nor has respondent, either alone or in conjunction with any other individual or individuals, corporation or corporations, or any other type of business entity, caused competition to have been hindered, lessened, restricted or forestalled in any branch or form of the rigid steel conduit industry. Further answering the Complaint, respondent says:

Count I.

1. Respondent denies the averments of Paragraph One as stated. Rigid Steel Conduit Association is not an unincorporated trade association nor has it any officers. To the contrary, because of its inability to carry out its dominant purpose and for reasons beyond the control of its members, said Association was dissolved on June 1, 1940. Prior thereto, to-wit, about April 1, 1939, said Association discontinued commercial activities entirely and confined its activities to technical problems. Said Association was not formed in 1934. To the contrary it had been in
64 existence for many years prior to 1934. The dominant purpose of said Association was to gather trade statistics of past and closed transactions and to prevent the occurrence of destructive and illegal practices by those engaged in the business of distributing the products of the conduit manufacturing industry. Neither the Association nor its members has undertaken to fix prices or to engage in transactions in violation of Section 5 of the Federal Trade Commission Act, or to do any other act or things, either singly or in concert, violative of the law. Respondent avers that the dissolution of the Association was brought about involuntarily and by its inability to accomplish the dominant purpose of its formation and that there is neither a possibility nor a probability that the Association will be revived and hence a cease and desist order would be against a defunct and non-existent Association. Respondent is advised by counsel, believes and therefore avers that all matters covered in Count I of the Complaint are academic and hence do not present a mat-

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ter within the jurisdiction of the Federal Trade Commission.

Respondent admits Herbert S. Blake was President of said Rigid Steel Conduit Association from November 1937 until April 1939, but denies that he directed the affairs of said Association. To the contrary said Blake acted as counsel to said Association and his election to the presidency was a matter of convenience. The affairs of said Association were always under the direction of its Board of Directors.

Respondent has not sufficient knowledge to enable it to answer regarding the facts averred in the Complaint
65 as to the identity of the other corporate and individual respondents but accepts the answers of said respective respondents in this respect.

Respondent denies that it and the other respondents have engaged in or assisted and/or cooperated with each other in the alleged unlawful acts, etc., set forth in the Complaint. To the contrary respondent avers that neither it, nor other respondents so far as this respondent knows, has done anything unlawful, either singly or as a group, nor have they acted collusively and collectively, or engaged in monopolistic practices in the production, price, or sale of rigid steel conduit, nor have they manipulated the price quotations of rigid steel conduit nor have they violated Section 5 of the Federal Trade Commission Act.

2. Respondent does not know the personnel of Organization Service Corporation. Respondent denies that said corporation organized, managed and directed Rigid Steel Conduit Association and denies that said corporation aided, assisted, etc., in the alleged illegal practices as set forth in Paragraph Two and denies there were any such illegal practices.

3. Respondent is not sufficiently informed to enable it to answer the averments of Paragraph Three and hence denies the same.

4. The averments of Paragraph Four are admitted except that respondent avers that during the years covered by the Complaint, in only 1936, 1937 and 1939 was the volume of rigid steel conduit sold and distributed in excess of 125,000 tons. In the other years the volume
66 was less than 95,000 tons.

5. The averments of Paragraph Five are conclusions of fact and law, as respondent is advised, and need not be answered but respondent denies the same as being

without factual basis. Neither this respondent nor the other respondents have been, or are now, engaged in carrying out a wrongful and unlawful understanding, agreement, combination and conspiracy, etc., as alleged in the Complaint.

6. Respondent avers in answer to Paragraph Six that there never was, nor is there now, an understanding, agreement, combination and/or conspiracy among respondents and others, as averred therein, to do the acts therein charged.

The matters charged in sub-paragraphs (1), (2), (3) and (4) and the conclusions thereof are denied. The basing point method and price formula, have been the trade practice of the rigid steel conduit industry for many years and are not the result of any agreement, understanding or concerted action among respondents, as averred in the Complaint.

The averments of sub-paragraph (5) are denied. Said Donley simply compiled freight rates on rigid steel conduit, which is done by every traffic department in the industry and can be done by any one familiar with Interstate Commerce Commission rate sheets. Said Donley never at any time, as respondent is informed, prepared factors or adders for the respondent or the conduit manufacturing industry. Said factors or adders have no connection with any basing point price, nor with any
67 basing point or other point, listed or unlisted, being merely a mathematical calculation showing the customer the amount of freight he would pay on any particular size of conduit at any particular freight rate.

The averments of sub-paragraphs (6) to (9), inclusive, are denied. This respondent and many of the other respondents had used consignment agency contracts long prior to the employment of Organization Service Corporation. The only change therein by Herbert S. Blake, Esq., as respondent believes, was to make the same technically uniform and primarily to make the same conform to the provisions of the Robinson-Patman Act. The "protective" contracts and other contracts had been in use for many years and the purpose of the same is to protect the buyer against an advance in price during the life of a building contract and as well to give him the advantage of any decline in price. Respondent denies that uniformity in terms and conditions of sale or of prices were agreed upon or maintained. Respondent denies there was a

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method or system of espionage employed. Respondent admits that special building contracts were checked to prevent fraudulent and discriminatory practices but avers that said checking was solely for the individual or firm requesting same, and the reports thereon were not made known to any other firm or individuals but solely to the firm or individual on whose behalf the checking was done.

Respondent denies the averments of sub-paragraph (10). Respondent avers that the only uniformity in price quotations was that resulting from the necessity of meeting competitors' published price sheets, and never resulted from agreement between respondents.

68 Respondent denies the averments of sub-paragraph (11).

Respondent denies the averments of sub-paragraph (12).

Respondent denies the averments of sub-paragraphs (13) to (16), inclusive.

Respondent is advised by counsel, believes and therefore avers that the averments of sub-paragraph (17) are too vague and indefinite to permit an answer. Respondent does not know of the "instances" nor the "economic and competitive advantages" therein averred and hence can not answer. Respondent has not made any such agreements and does not know of any such agreements on the part of other respondents.

Respondent denies the averments of sub-paragraph (18). Respondent made no such agreement nor does it know of other respondents making such agreements or taking such retaliatory action.

Respondent denies the averments of sub-paragraph (19). Respondent avers there was no such cooperation as alleged nor were there any unlawful acts, practices and methods.

7. Respondent is advised by counsel that the allegations of Paragraph Seven are conclusions and need not be answered but nevertheless denies the same.

Count II.

1. Respondent admits in answer to Paragraph One that it ships rigid steel conduit in interstate commerce and admits that the various respondents named are in competition with each other but denies that such competition

69 has been hindered, restrained, etc., as averred in Paragraph One. Respondent is without sufficient

knowledge as to the manner in which the other respondents carry on their business and hence denies the averments of Paragraph One. Respondent, however, will accept the answer of the respective respondents as to the manner and method by which they carry on their business.

2. Respondent denies the fact averments of Paragraph Two and the conclusion thereof. Respondent denies that each said respondent conduit seller, with knowledge that the other said respondent conduit sellers simultaneously do likewise, generally refrains from quoting F. O. B. its place of production or shipment, prices that are independent of and unrelated to delivered price quotations determined from a basing point formula. Respondent quotes either F. O. B. mill or F. O. B. destination and sells many customers F. O. B. mill. Respondent does not know how other conduit sellers quote or sell.

3. The averments of Paragraph Three of the Complaint are argumentative and conclusions and are not factually correct and are denied.

4. The averments of Paragraph Four are denied. Respondent further avers that the matter of basing point delivered price quotation is solely an economic problem and is not an unfair trade practice and hence is not within the jurisdiction of the Federal Trade Commission under Section 5 of the Federal Trade Commission Act.

70 5. Further answering the Complaint the respondent avers that the basing point delivered price quotation method has been used by the industry for upwards of twenty-five (25) years and is not the result of any combination or agreement, express or implied, between respondents. Respondent further avers that any conduit manufacturer is at liberty to establish a new basing point. Respondent avers that an abolition of said method will not be in the public interest but, to the contrary, by reason of the geographical locations of the manufacturing plants of the various manufacturing respondents, will result in the creation of monopolies within the industry or the over-expansion of productive capacity, either or both of which will not be in the public interest.

Wherefore, having answered the Complaint in fact and in law, respondent prays that it be dismissed.

Steelduct Company,
N. Denning Stewart,
By Stewart and Lewis,
Its Counsel.

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83 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—4452.) * *

ANSWER OF H. G. MORROW.

Comes now respondent H. G. Morrow and for answer to the complaint herein:

As to Alleged Count I.

First: Answering Paragraph One of Count I, denies upon information and belief that respondent Rigid Steel Conduit Association is an unincorporated trade association, and alleges upon information and belief that said association was dissolved as of May 31, 1940. Admits that said association was formed in 1934 and that from time to time since 1934 has included among its membership manufacturers of rigid steel conduit, including Central Tube Company, and that from time to time since 1934 its membership has included respondents Enamelled Metals Company, Fretz-Moon Tube Company, Inc., Garland Manufacturing Company, General Electric Company, General Electric Supply Corporation, Clayton Mark & Com-
84 pany, Steelduct Company, Walker Brothers, Youngstown Sheet and Tube Company, Cohoes Rolling Mill Company, Laclede Steel Company, Laclede Tube Company and Triangle Conduit and Cable Company, Inc. Denies upon information and belief that said respondent members made use of the offices or other facilities of respondent Rigid Steel Conduit Association for any unlawful act, thing, practice or method.

Admits that respondent Herbert S. Blake at various times during the six years last past has as its President participated in the management of the affairs of respondent Rigid Steel Conduit Association.

Admits that respondents Lawrence R. Quinn, Robert S. Booth, George H. Sicard, I. A. Bennett, J. M. Barton and H. S. Walker have from time to time during the six years last past held the offices of respondent Rigid Steel Conduit Association alleged to be held or to have been held

by them, but denies upon information and belief that any of said respondents now hold such offices.

Admits that he was, but denies that he is, a member of the Board of Directors of respondent Rigid Steel Conduit Association and alleges that he resigned as a member of the Board of Directors of said association as of May 31, 1940. Admits that he was, but denies that he is, a vice-president of respondent Central Tube Company and alleges that he resigned as a vice president of respondent
85 Central Tube Company as of October 1, 1940.

Denies that respondent Central Tube Company manufactures, sells or distributes rigid steel conduit.

Denies that respondent Spang Chalfant, Inc. at any time since October 11, 1940, and upon information and belief at any time prior thereto, has cooperated with or assisted any members of respondent Rigid Steel Conduit Association in any act, thing, practice or method.

Admits that respondent Spang Chalfant, Inc. is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with its principal office and place of business located in the Grant Building in the City of Pittsburgh, Pennsylvania. Denies that respondent Spang Chalfant, Inc. manufactures rigid steel conduit and admits that it sells and distributes rigid steel conduit to and through jobbers, wholesalers and others in certain states of the United States.

Denies that respondent Republic Steel Corporation cooperates with this respondent or with respondent Spang Chalfant, Inc. in promoting or furthering any act, thing, practice or method.

Denies that he has knowledge as to the activities or business of respondent Charles Donley, except that respondent Spang Chalfant, Inc. subscribes to a freight rate service compiled by respondent Charles Donley.

86 Admits that respondent Frank C. Hodkinson during the six years last past and prior to three years last past has served as a member of committees of respondent Rigid Steel Conduit Association.

Admits that during the six years last past, but not after March 15, 1940, respondent Central Tube Company engaged in the manufacture of rigid steel conduit and caused it to be shipped from Ambridge, Pennsylvania, to its customers located in certain states of the United States other than Pennsylvania; that prior to March 15, 1940, respond-

ent Central Tube Company sold and distributed principally through jobbers or wholesalers who bought and sold electrical supplies, including conduit, outright and on a consignment basis and, upon information and belief, that many of such jobbers or wholesalers resold principally to electrical contractors and to Government agencies; that prior to March 15, 1940, respondent Central Tube Company was in active competition with one or more of the other respondent "conduit sellers" in making or seeking to make sales in commerce between and among certain of the various states of the United States, of rigid steel conduit; but denies that this respondent has in any way hindered, lessened, restricted or forestalled said competition. Denies upon information and belief that respondent Spang Chalfant, Inc. has at any time engaged in the man-
87 ufacture of rigid steel conduit or caused rigid steel conduit to be manufactured and shipped for it, except, upon information and belief, that since approximately February 20, 1940, but not prior thereto, respondent Spang Chalfant, Inc. has sold rigid steel conduit which was shipped from Ambridge, Pennsylvania, or Etna, Pennsylvania, to its customers located in certain states of the United States other than Pennsylvania; admits that respondent Spang Chalfant, Inc. sells and distributes principally through jobbers or wholesalers who buy and sell electrical supplies, including conduit, outright and on a consignment basis and, upon information and belief, that many of said jobbers or wholesalers resell principally to electrical contractors and to Government agencies; and admits that respondent Spang Chalfant, Inc. has been and is in competition with one or more of the other respondent "conduit sellers" in making or seeking to make sales in commerce between and among certain of the various states of the United States, of rigid steel conduit, but denies that this respondent has in any way hindered, lessened, restricted or forestalled said competition.

Denies that respondent Spang Chalfant, Inc. after October 11, 1940 has acted collusively or collectively, or has engaged in any monopolistic practice or has attempted to or does dominate or manipulate any price quotations, and denies upon information and belief that respondent Spang Chalfant, Inc. prior to October 11, 1940 or re-
88 spondent Central Tube Company has acted collusively or collectively, or has engaged in any monopolistic

practice or has attempted to manipulate any price quotation.

Denies that he has knowledge as to the allegations contained in Paragraph One of Count I, except as hereinabove specifically admitted, denied or otherwise referred to.

Second: Admits that respondent Organization Service Corporation, has performed advisory services for respondent Rigid Steel Conduit Association at various times during the six years last past.

Admits upon information and belief that respondent Herbert S. Blake is President of respondent Organization Service Corporation.

Denies that respondent Organization Service Corporation or its officers, directors or agents have aided, assisted, advised, managed, directed or otherwise cooperated with respondent Spang Chalfant, Inc. after October 11, 1940 in any unlawful act, method, policy, rule or practice, and denies upon information and belief that respondent Organization Service Corporation or its officers, directors or agents have aided, assisted, advised, managed, directed or otherwise cooperated with respondent Spang Chalfant, Inc. prior to October 11, 1940 or respondent Central Tube Company in any unlawful act, method, policy, rule or practice.

89 Denies that he has knowledge as to the allegations contained in Paragraph Two of Count I, except as hereinabove specifically admitted, denied or otherwise referred to.

Third: Denies that he has knowledge as to the allegations contained in Paragraph Three of Count I, except denies that this respondent has been a party to any understanding, agreement, combination or conspiracy or act, thing, practice or method which may be alleged to have hindered, lessened, restricted or forestalled competition in the rigid steel conduit business.

Fourth: Admits the allegations contained in Paragraph Four of Count I, except denies that he has knowledge with respect to the tonnage of conduit sold or distributed in the United States by the respyondent "conduit sellers".

Fifth: Denies each and every allegation contained in Paragraphs Five, Six and Seven of Count I in so far as said allegations may refer to this respondent, or to respondent Spang Chalfant, Inc. after October 11, 1940, and denies upon information and belief said allegations in so far as they may refer to respondent Spang Chalfant,

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Inc. prior to October 11, 1940, or to respondents Rigid Steel Conduit Association or Central Tube Company, and denies that he has knowledge as to said allegations in so far as they may refer to the other respondents.

90 As to Alleged Count II.

Sixth: Answering Paragraph One of Count II, admits that prior to March 15, 1940, respondent Central Tube Company engaged in the manufacture of rigid steel conduit and caused it to be shipped from Ambridge, Pennsylvania to its customers located in certain states of the United States other than Pennsylvania, and that respondent Central Tube Company was in competition with other sellers of conduit, but denies that this respondent has in any way hindered, restrained, lessened, suppressed, frustrated or prevented such competition. Denies on information and belief that respondent Spang Chalfant, Inc. has at any time sold and manufactured or caused to be manufactured and shipped for it, rigid steel conduit, except, upon information and belief, that since approximately February 20, 1940, but not prior thereto, it has sold rigid steel conduit which from approximately February 20, 1940 was shipped from Ambridge, Pa., or Etna, Pa. to its customers located in certain states of the United States other than Pennsylvania; admits that respondent Spang Chalfant, Inc. has been and is in competition with other sellers of conduit; but denies that this respondent has in any way hindered, restrained, lessened, suppressed, frustrated or prevented such competition.

Denies that he has knowledge as to the allegations contained in Paragraph One of Count II, except as here-
91 inabove specifically admitted, denied or otherwise referred to.

Seventh: Denies upon information and belief each and every allegation contained in Paragraph Two of Count II, and alleges that it is the practice of sellers of conduit, including Spang Chalfant, Inc., independently to sell conduit at delivered prices which represent either a Pittsburgh or Chicago basing point price plus freight calculated at current freight rates from Pittsburgh or Chicago, as the case may be, to the point of delivery.

Eighth: Denies upon information and belief each and every allegation contained in Paragraph Three of Count

II, except admits that occasionally sellers of conduit, including Spang Chalfant, Inc., receive more for conduit sold to their customers located nearer the place where conduit sold by them is manufactured and shipped than they receive for conduit of equal quality and quantity sold to their customers located farther from the place where conduit sold by them is manufactured and shipped.

Ninth: Denies each and every allegation contained in Paragraph Four of Count II in so far as said allegations may refer to respondent Spang Chalfant, Inc. after October 11, 1940, and denies upon information and belief said allegations in so far as they may refer to respondent Spang Chalfant, Inc. prior to October 11, 1940 or to respondent Central Tube Company, and denies that he has knowledge as to said allegations in so far as they may
92 refer to other respondent "conduit sellers".

Further answering the complaint herein, this respondent alleges:

I. This respondent became a member of the Board of Directors of the Rigid Steel Conduit Association on or before Nov. 12, 1936, and continued as such until his resignation as of May 31, 1940. He became a Vice-President of respondent Central Tube Company on June 3, 1932 and continued as such until his resignation as of October 1, 1940. He was employed by Spang Chalfant, Inc. on October 11, 1940 as manager of sales of its rigid steel conduit business and has continued to hold and now holds such position.

2. Spang Chalfant, Inc. sells conduit at delivered prices which represents either a Pittsburgh or Chicago basing point price plus freight calculated at current freight rates from Pittsburgh or Chicago, as the case may be, to the point of delivery. During the period that this respondent was a vice-president of Central Tube Company, Central Tube Company used a basing point method of quoting prices, and it has been the independent practice of other sellers of conduit to use a basing point method of quoting prices. Upon information and belief the basing point method of quoting prices is the natural result of
93 basic economic conditions in the steel industry, is consistent with free and open competition in the industry, and does not result in monopolistic control over prices or discriminatory treatment between customers nor does it constitute an unfair method of competition.

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3. At no time has this respondent, as a representative of Central Tube Company or of Spang Chalfant, Inc. or as a director of the Rigid Steel Conduit Association or otherwise, ever entered into any conspiracy, agreement or understanding with anyone with respect to prices, terms and conditions of sale, consignment contracts, so-called "protection" contracts, or any other phase of the rigid steel conduit business.

Wherefore, this respondent prays that the complaint be dismissed, and for such other and further relief as may be just and proper.

H. G. Morrow,
Pittsburgh, Pa.

Sullivan & Cromwell,
48 Wall Street,
New York, N. Y.
Attorneys for Respondent
H. G. Morrow.

101 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption 4452) * *

ANSWER OF RESPONDENT GENERAL ELECTRIC COMPANY.

Respondent General Electric Company by Gerard Swope, Jr. its attorney, in answer to the complaint of the Federal Trade Commission dated January 25, 1941 in the above entitled matter

Count I.

Paragraph One: Admits that the Rigid Steel Conduit Association was an unincorporated trade association, that it was formed in 1934 to promote lawfully the interests of its members, and that on information and belief, has since been disbanded; admits that this respondent was a member of said Association from about November 1934 until about July 1938, and that the membership of said Association, which membership varied from time to time, included manufacturers of a substantial portion of the

rigid steel conduit produced in the United States.

102 Admits that Herbert S. Blake was at one time President of said Association; that Lawrence R. Quinn was at one time a director and Treasurer of said Association; that John Weiss was at one time Assistant Treasurer of said Association; that Robert S. Booth was at one time Executive Secretary of said Association; that George H. Sicard was Executive Secretary of said Rigid Steel Conduit Association from some time in 1934 to about March 1936; that I. A. Bennett was at one time Chairman of said Association; and that J. M. Barton, H. G. Morrow, and H. S. Walker were at one time members of the Board of Directors of said Association.

Admits that respondent A. E. Newman is Manager of the Wiring Materials Sales Section of this respondent.

Admits that this respondent is a corporation organized and existing under the laws of the State of New York, with its principal place of business at 1 River Road, Schenectady, New York, that this respondent manufactures at and ships from New Kensington, Pennsylvania rigid steel conduit and that it distributes outright and on a consignment basis such conduit through jobbers, wholesalers, including the General Electric Supply Corporation throughout the United States, and through others in competition with one or more of the other respondent "conduit sellers".

Admits that this respondent manufactures and sells to the Clifton Conduit Company rigid steel conduit and

103 admits on information and belief that said Clifton Conduit Company sells and distributes conduit to wholesalers and jobbers and others throughout the United States.

Admits that respondent General Electric Supply Corporation organized and existing under the laws of the State of Delaware with offices situated at 1260 Boston Avenue, Bridgeport, Connecticut.

Denies each and every allegation contained in Paragraph One of Count I. of the Complaint insofar as said allegations relate to this respondent, except as hereinabove specifically admitted; and is without knowledge or information sufficient to form a belief insofar as said allegations relate to other respondents and therefore neither denies nor admits the same, except as hereinabove specifically admitted.

Paragraph Two: Admits that service of the Organiza-

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tion Service Company were engaged by the Rigid Steel Conduit Association at some time during the existence of such Association.

Denies each and every allegation in Paragraph Two of Count I. of the Complaint insofar as they relate to this respondent; and is without knowledge or information sufficient to form a belief as to each and every allegation in said Paragraph Two insofar as said allegations relate to other respondents and therefore neither denies nor admits the same, except as hereinabove specifically admitted.

104 Paragraph Three: Admits on information and belief that the National Electric Wholesalers Associa- is an Association of numerous wholesalers and jobbers located in the various states, and that such wholesalers and jobbers are engaged in the wholesale distribution of electrical supplies, including rigid steel conduit, in competition with one another.

Denies each and every allegation contained in Paragraph Three of Count I of the Complaint insofar as it relates to this respondent; and is without knowledge or information sufficient to form a belief insofar as said allegations relate to other respondents and therefore neither denies nor admits the same, except as hereinabove specificaliy admitted.

Paragraph Four: Admits that rigid steel conduit is used as raceways for the purpose of pulling in or withdrawing of wires or cables after the conduit is in place and that it is made of steel pipe that has been cleaned of scale and rust and been given an enameled or galvanized corrosion resistant coating; that one of the purposes of such coating is to product a smooth surface so that electric wiring can be drawn through the conduit with facility and without injury to the wires, and that such conduit is usually placed in large buildings during their construction and that the electric wiring is later drawn through the conduit.

105 Except as hereinabove specifically admitted, this respondent is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph Four of the Complaint and therefore neither denies nor admits the same.

Paragraph Five: Denies each and every allegation contained in Paragraph Five of Count I. of the Complaint.

Paragraph Six: Denies each and every allegation contained in Paragraph Six of Count I. of the Complaint.

Paragraph Seven: Denies each and every allegation contained in Paragraph Seven of Count I. of the Complaint, and further denies that any acts or things done by this respondent as alleged or otherwise were to the injury or prejudice of the public or of competitors or of consumers as alleged or otherwise, and further denies that any such acts or things constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Count II.

Paragraph One: Admits that this respondent has for a period of several years last past and does now manufacture and sell rigid steel conduit and that such conduit is manufactured and shipped from New Kensington,
106 Pennsylvania to its customers located in the various States of the United States and that in so doing it is in competition with other manufacturers of rigid steel conduit.

Denies each and every allegation in said Paragraph One of Count II. of the Complaint insofar as they relate to this respondent, except as hereinabove specifically admitted; and is without knowledge or information sufficient to form a belief as to each and every allegation in said Paragraph One of Count II. of the Complaint insofar as they relate to the other respondents, and therefore neither admits nor denies the same.

Paragraph Two: Admits that this respondent generally, but not exclusively, sells rigid steel conduit at delivered prices, and that such prices are based on its price at Pittsburgh or Chicago, whichever is more favorable to the customer, plus the amount of freight from such point to the point of delivery.

Denies each and every allegation contained in Paragraph Two of Count II. of the Complaint insofar as said allegations relate to this respondent, except as hereinabove specifically admitted; and is without knowledge or information sufficient to form a belief insofar as said allegations relate to other respondents, and therefore neither admits nor denies the same.

107 Paragraph Three: Denies each and every allega-

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tion contained in said Paragraph Three of Count II. of the Complaint.

Paragraph Four: Denies each and every allegation of Paragraph Four of Count II. of the Complaint, and further denies that any acts or things done by this respondent as alleged or otherwise were to the injury or prejudice of the public or of competitors or of consumers as alleged or otherwise and further denies that any such acts or things conttitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Wherefore, this respondent prays that said complaint be dismissed.

General Electric Company,
By Gerard Swope, Jr.,
Its Attorney.
P. O. Address
1285 Boston Avenue
Bridgeport, Connecticut

Dated April 11, 1941.

108 UNITED STATES OF AMERICA.

BEFORE THE FEDERAL TRADE COMMISSION.

• • (Caption—4452.) • •

ANSWER OF RESPONDENT TRIANGLE CONDUIT & CABLE CO. INC.

Triangle Conduit & Cable Co. Inc., a Delaware corporation, by Morton Peyser, its attorney answering the complaint of the Federal Trade Commission served upon it in behalf of Triangle Conduit & Cable Co., Inc., a New York corporation the respondent named in the aforesaid complaint, avers that the Federal Trade Commission has no jurisdiction with respect to the acts alleged in said complaint and that said complaint fails to state acts sufficient to constitute a violation of Section 5 of the act of Congress of September 26, 1914, commonly known as the Federal Trade Commission Act and fails to state any charges within the meaning of the said act and without waiving the foregoing or any other invalidities or defects

in the Commission's jurisdiction and without waiving any of the invalidities, generalities or defects in said complaint and reserving to itself the benefit of all exceptions 109 that can or may be taken with respect thereof and reserving to itself the right to move to strike out any one or more of the allegations of the complaint and denying that this proceeding is in the public interest, and denying that this respondent or its predecessor has been or is now using unfair methods of competition in commerce, makes further answer as follows:

Answer to Count I.

1. Answering paragraph One of Count I this respondent admits that Rigid Steel Conduit Association formerly was an unincorporated association and had an office located at No. 17 East 42nd Street, in the City of New York, State of New York; that it was formed in or prior to the year 1934 lawfully to promote the interests of its members; that respondent's predecessor, Triangle Conduit & Cable Co., Inc., a corporation named in the complaint was at the various periods of time therein mentioned a member of the Association; that those of said respondents who manufacture rigid steel conduits, together with this respondent and its predecessor, Triangle Conduit & Cable Co., Inc., a New York corporation, manufacture substantially all 110 the rigid steel conduit produced in the United States; that at various times prior to August, 1936, Lawrence R. Quinn was and acted as the Treasurer and a member of the Board of Directors of said Association; that one George H. Sicard served as Executive Secretary of said Association for a period of approximately two years which began some time in the year 1934; that this respondent is a corporation duly organized and existing under and by virtue of the Laws of the State of Delaware and that heretofore and on or about the 29th day of June, 1940, a statutory merger was effected and completed whereby Triangle Conduit & Cable Co., Inc., a New York corporation and the corporation referred to in the complaint herein was duly merged into this respondent corporation which has succeeded to, and continued in the business theretofore operated and conducted by the said Triangle Conduit & Cable Co. Inc., a New York corporation; that this respondent manufactures and sells and distributes,

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and its predecessor Triangle Conduit & Cable Co., Inc., a New York corporation, manufactured rigid steel conduit and sold and distributed it to its customers in various states of the United States; that its customers include and those of its predecessors Triangle Conduit & Cable Co., Inc. included jobbers and wholesalers and other
111 purchasers of rigid steel conduit and that some of the sales thereof made by this respondent and its predecessor, Triangle Conduit & Cable Co. Inc., were and are made through jobbers; that in the first two of the six years last past Frank C. Hodkinson may have attended and participated in meetings of members of said Association as a representative of American Circular Loom Company, which formerly had an office at 205 East 42nd Street in The City of New York, N. Y., and may have been a member of one or more committees of said Association from time to time; that during the six years last past this respondent, and/or Triangle Conduit & Cable Co., Inc., a New York corporation, its predecessor, engaged in the manufacture of rigid steel conduit at Moundsville, West Virginia as alleged in the complaint and has shipped such conduit to its customers, some of whom have been and are located in the States of the United States other than the state of origin of the shipments thereof; upon information and belief and only for the purpose of this proceeding, that some of the jobbers and wholesalers to whom this respondent and its predecessor, Triangle Conduit & Cable Co. Inc., a New York corporation, sells or sold rigid steel conduit manufactured by them are members of The National Electrical Wholesalers Association; and that this respondent and its predecessor, Tri-
112 angle Conduit & Cable Co. Inc. a New York corporation, has been and is in competition with one or more of the other respondents referred to in the complaint as conduit sellers in making or seeking to make sales of rigid steel conduit in and among various states of the United States and in the District of Columbia.

This respondent denies, upon information and belief, that said Rigid Steel Conduit Association now is a trade association and that it has its offices and place of business located at No. 17 East 42nd Street, in the City of New York, State of New York, and that it has officers as alleged in the complaint. This respondent avers, upon information and belief, that said Association was dissolved and

disbanded at some time prior to June, 1940, and since such times has had no office or place of business at the location mentioned in said paragraph One or elsewhere.

This respondent denies that it or its predecessor, Triangle Conduit & Cable Co., Inc., a New York corporation, at any time engaged in, or acted, advised, assisted or cooperated with any others in furtherance of, any unlawful acts, things, practices or methods alleged in the complaint, or made use of any offices or facilities of Rigid Steel
113 Conduit Association for any such purpose.

This respondent denies that it or its predecessor Triangle Conduit & Cable Co., Inc., a New York corporation has used or promoted or otherwise furthered any unlawful acts, things, practices or methods alleged in the complaint and this respondent also denies that any of the other respondents named in the complaint has cooperated with or assisted, or attempted to cooperate with or assist, this respondent, or its predecessor Triangle Conduit & Cable Co. Inc., in using or promoting or otherwise furthering any of said unlawful acts, things, practices or methods.

This respondent denies that competition in the sale of rigid steel conduit between and among the various states of the United States or in the District of Columbia has been hindered, lessened, restricted or forestalled by any understanding, agreement, combination or conspiracy, or by any acts, things, practices or methods done or carried on in pursuance or in furtherance of any understanding, agreement, combination or conspiracy, joined in or taken part in by this respondent, or its predecessor Triangle Conduit & Cable Co. Inc. a New York corporation as alleged in the complaint or otherwise.

114 It denies that this respondent acts collusively or collectively or engages or has engaged in monopolistic practices in the production, pricing, or selling of rigid steel conduit and that this respondent, and its predecessor, Triangle Conduit & Cable Co., Inc., a New York corporation, either alone or in conjunction with any other sellers of such conduit, has been or is in a position to dominate and manipulate at any time or place the price quotations made to purchasers of such conduit.

This respondent knows of Charles Donley, who has an office in the Dravo Building, in the City of Pittsburgh, Pennsylvania, as an advisor on traffic matters for ship-

pers; it denies any knowledge as to whether or not the said Charles Donley served as advisor to and traffic manager to shippers and their trade association and members thereof in connection with the preparation and distribution of compilations of freight factors or "adders" for use in calculating the price quotations and demands strict proof thereof.

Except as hereinbefore specifically admitted or otherwise answered, this respondent for itself and in behalf of its predecessor Triangle Conduit & Cable Co., Inc., a New York corporation denies each and every alle-
115 gation contained in said paragraph One of Count I in so far as they relate or refer to this respondent or its predecessor Triangle Conduit & Cable Co., Inc., a New York corporation, and except in so far as the allegations of said paragraph One are thus specifically answered, this respondent is without knowledge of the allegations thereof, including all subdivisions thereof, and demands strict proof thereof.

2. This respondent denies that the respondent Organization Service Corporation or its officers, employees and agents, or any of them, have at any time aided, assisted, advised, managed, directed or otherwise cooperated with this respondent or its predecessor Triangle Conduit & Cable Co., Inc., a New York corporation in carrying out any of the acts, methods, policies, rules or practices as set forth in the complaint, alleged to be unlawful, and further denies, in so far as it relates or refers to this respondent or its predecessor Triangle Conduit & Cable Co., Inc., a New York corporation, the allegation of paragraph Two of Count I of the complaint as conduit sellers has been hindered, suppressed and lessened. This respondent is without sufficient knowledge as to all the other allegations of said paragraph Two, to admit or deny the same and demands strict proof thereof.

116 3. This respondent is without knowledge as to the allegations of paragraph Three of Count I, including all subdivisions thereof, except the allegation that the Commission names and includes as respondents in this proceeding the various companies named in subdivisions 1 to 13, inclusive, of said paragraph, and except that this respondent denies that any competition referred to in said paragraph has been hindered, lessened, restricted or forestalled by any understanding, agreement, combination, or

conspiracy, or by any acts, things, practices or methods done or carried on in pursuance of, or in furtherance of, any understanding, agreement, combination or conspiracy joined in or taken part in or done or carried on by this respondent or its predecessor, Triangle Conduit & Cable Co., Inc.,, a New York corporation, as alleged in said paragraph or otherwise.

4. This respondent admits for the purposes of this proceeding as substantially correct the allegations of paragraph Four of Count I, except that this respondent is without knowledge as to the allegation thereof concerning the quantity of rigid steel conduit sold and distributed annually in the United States by the respondents who
117 are referred to in the complaint as conduit sellers, other than that in some years in the last six years more than 125,000 tons thereof have been so sold and distributed by them.

5. This respondent denies each and every allegation contained in paragraph Five of Count I in so far as they relate or refer to this respondent, or its predecessor Triangle Conduit & Cable Co., Inc., a New York corporation. Except in so far as the allegations of said paragraph Five are thus specifically answered, this respondent is without knowledge as to the allegations thereof.

6. This respondent denies each and every allegation contained in paragraph Six of Count I, including subdivisions (1) to (19), inclusive, thereof, in so far as they relate or refer to this respondent or its predecessor Triangle Conduit & Cable Co. Inc., a New York corporation. Except in so far as the allegations of said paragraph Six are thus specifically answered, this respondent is without knowledge as to the allegations thereof.

7. Answering paragraph Seven of Count I, this respondent repeats and reasserts each and every denial contained in the foregoing paragraphs of this answer. It
118 denies each and every allegation contained in said paragraph Seven in so far as the allegations thereof, or any of them, relate or refer to this respondent or its predecessor, Triangle Conduit & Cable Co., Inc., a New York corporation, or have reference to any acts, things, practices, methods or agreements alleged to have been engaged in, or joined or taken part in, by this respondent or its predecessor Triangle Conduit & Cable Co., Inc., a New York corporation. Except in so far as the allegations

of said paragraph Seven are thus specifically denied, this respondent is without knowledge as to the allegations thereof.

Answer to Count II.

1. This respondent admits that it manufactures and that its predecessor, Triangle Conduit & Cable Co., Inc., a New York corporation manufactured rigid steel conduit at Moundsville, West Virginia and that part of said conduit is and was shipped by it or its predecessor, Triangle Conduit & Cable Co., Inc., a New York corporation, to its customers located in the States of the United States other than the said State of West Virginia; it admits that in the sale of such rigid steel conduit it is and its predecessor,
Triangle Conduit & Cable Co., Inc., a New York cor-
119 poration, was in competition with other respondents
named in the complaint herein. It denies that competition in the sale thereof by this respondent or its predecessor Triangle Conduit & Cable Co. Inc., a New York corporation, has been in any respect hindered, restrained, lessened, suppressed, frustrated, eliminated or prevented by any acts, things, practices or methods alleged in the complaint, or otherwise. Except as so specifically otherwise answered, this respondent denies each and every allegation of paragraph One of Count II of the complaint in so far as they relate or refer to this respondent or its predecessor, Triangle Conduit & Cable Co. Inc., a New York corporation; and, except in so far as the allegations of said paragraph One are thus specifically answered, this respondent is without knowledge as to the allegations of said paragraph.

2. This respondent admits that it commonly sells and its predecessor, Triangle Conduit & Cable Co., Inc., a New York corporation, sold rigid steel conduit at delivered prices; that it commonly quotes prices therefor based on its announced prices therefor at certain so-called basing points; and that to any basing point price quoted by this
respondent or its predecessor Triangle Conduit &
120 Cable Co. Inc., a New York corporation, the amount
of freight from such basing point to the place of delivery is added to arrive at the delivered price. Except as so specifically admitted, this respondent denies each and every allegation of paragraph Two of said Count II.

3. This respondent admits that in selling rigid steel

conduit to purchasers at certain locations at which at the same time similar conduit is offered to them for sale by other sellers thereof, it must, and does, and its predecessors Triangle Conduit & Cable Co., Inc., a New York corporation, did, in order to meet the competition of such other sellers to purchasers at such locations, sell such conduit at delivered prices lower than the delivered price at which this respondent can, or its predecessor Triangle Conduit & Cable Co. Inc., a New York corporation, could, and does, currently sell such conduit to purchasers at other locations at which the competitive prices to be met are higher, and that some of such latter locations may be nearer to this respondent's place of manufacture of such conduit than are some of such first-mentioned locations; but this respondent denies that by so selling rigid steel conduit it deprives or its predecessor Triangle Con-
121 duit & Cable Co., Inc., a New York corporation, deprived any customer of price advantages of any kind. Except as so specifically admitted, this respondent denies each and every allegation contained in paragraph Three of said Count II in so far as they relate or refer to this respondent. This respondent denies upon information and belief each and every allegation of said paragraph Three not hereinbefore specifically answered, except that this respondent admits on information and belief that other respondents referred to in said Count II as conduit sellers in meeting the competition sell such conduit at different delivered prices at different places of delivery.

4. Answering paragraph Four of said Count II, this respondent repeats and reasserts each and every denial contained in the foregoing paragraphs of this answer to said Count II and denies each and every allegation of said paragraph Four. To the contrary of said allegations this respondent avers that the above-mentioned policy and practice of this respondent and its predecessor Triangle Conduit & Cable Co. Inc., a New York corporation, in meeting competitive prices serves to broaden the competitive field in which this respondent can and its pred-
122 ecessor Triangle Conduit & Cable Co. Inc., a New York corporation could sell its rigid steel conduit, that said policy and practice are in all respects lawful and within the rights of this respondent and its predecessor Triangle Conduit & Cable Co. Inc., a New York corporation, to meet competitive prices, and in so doing to sell its products at different locations and to different cus-

tomers at such different prices as may be required to that end.

Wherefore, this respondent demands that the complaint of the Federal Trade Commission in this proceedings be dismissed.

Triangle Conduit & Cable Co. Inc.
By: Morton Peyser,
Its Attorney,
Office & P. O. Address,
#8 West 40th Street,
Borough of Manhattan,
City of New York.

123 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—4452.) * *

ANSWER OF RESPONDENT GENERAL ELECTRIC SUPPLY CORPORATION.

Respondent General Electric Supply Corporation by Gerard Swope, Jr., its attorney, in answer to the complaint of the Federal Trade Commission dated January 25, 1941 in the above entitled matter.

Count I.

Paragraph One: Admits on information and belief that a Rigid Steel Conduit Association existed at one time and that its membership consisted of manufacturers of rigid steel conduit, but states on information and belief that said Association has since been disbanded.

Admits that respondent General Electric Company is a Corporation organized and existing under the laws of the State of New York, with its principal place of business at Schenectady, New York, and that said respondent manufactures rigid steel conduit and sells and distributes the same to jobbers and others throughout the United States, including this respondent.

124 Admits that this respondent is a Corporation organized and existing under the laws of the State of Delaware with offices situated at 1260 Boston Avenue, Bridgeport, Connecticut.

Denies each and every allegation contained in Paragraph One of Count I of the Complaint insofar as said allegations relate to this respondent, except as hereinabove specifically admitted, and is without knowledge or information sufficient to form a belief insofar as said allegations relate to other respondents and therefore neither denies nor admits the same except as hereinabove specifically admitted.

Paragraph Two: This respondent is without knowledge or information sufficient to form a belief as to each and every allegation in Paragraph Two of Count I of the Complaint and therefore neither admits nor denies the same.

Paragraph Three: Admits that the National Electrical Wholesalers Association is an unincorporated trade association of numerous wholesalers and jobbers located in the various States of the United States, and that such wholesalers and jobbers are engaged in the purchase and wholesale distribution of electrical supplies including rigid steel conduit in competition with one another.

125 Admits that this respondent is a member of said National Electrical Wholesalers Association; that L. E. Latham is Chairman of the Conduit Committee of said National Electrical Wholesalers Association and D. L. Fife, A. L. Helstrom, A. H. Kahn, C. R. McCullough, A. S. Riechman, D. M. Smith, and H. B. Tompkins are members of said Conduit Committee of said Association.

Denies each and every allegation contained in Paragraph Three of Count I of the Complaint insofar as said allegations relate to this respondent, except as hereinabove specifically admitted; and is without knowledge or information sufficient to form a belief insofar as said allegations relate to other respondents and therefore neither denies nor admits the same, except as hereinabove specifically admitted.

Paragraph Four: Admits that rigid steel conduit is used as raceways for the purpose of pulling in or withdrawing of wires or cables after the conduit is in place and that it is made of steel pipe that has been cleaned of scale and rust and been given an enameled or galvanized corrosion resistant coating; that one of the purposes of such coating is to produce a smooth surface so that electric wiring can be drawn through the conduit with facility and without injury to the wires, and that such conduit is usually placed in large buildings during their construc-

tion and that the electric wiring is later drawn through the conduit.

126 This respondent is without knowledge or information sufficient to form a belief as to the allegations contained in Paragraph Four of Count I of the Complaint and therefore neither denies nor admits the same, except as hereinabove specifically admitted.

Paragraph Five: Denies each and every allegation contained in Paragraph Five of Count I of the Complaint.

Paragraph Six: Denies each and every allegation contained in Paragraph Six of Count I of the Complaint.

Paragraph Seven: Denies each and every allegation contained in Paragraph Seven of Count I of the Complaint, and further denies that any acts or things done by this respondent as alleged or otherwise were to the injury or prejudice of the public or of competitors or of consumers as alleged, or otherwise, and further denies that any such acts or things constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Count II.

Paragraph One: Denies each and every allegation of Paragraph One of Count II of the Complaint.

Paragraph Two: Denies each and every allegation of Paragraph Two of Count II of the Complaint.

127 Paragraph Three: Denies each and every allegation of Paragraph Three of Count II of the Complaint.

Paragraph Four: Denies each and every allegation of Paragraph Four of Count II of the Complaint, and further denies that any acts or things done by this respondent as alleged or otherwise, were to the injury or prejudice of the public or of competitors or of consumers as alleged or otherwise and further denies that any such acts or things constitute unfair methods of competition in interstate commerce within the intent and meaning of Section 5 of the Federal Trade Commission Act.

Wherefore, this respondent prays that said Complaint be dismissed.

General Electric Supply Corporation,
By Gerard Swope, Jr.,
Its Attorney.

P. O. Address,
1260 Boston Avenue,
Bridgeport, Connecticut.

Dated April 11, 1941.

134 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption 4452) * *

ANSWERS OF RESPONDENTS, I. A. BENNETT AND NATIONAL ELECTRIC PRODUCTS CORPORATION.

Now come, I. A. Bennett and National Electrical Products Corporation, a corporation, by James M. Houston, their attorney, and in answer to the Complaint herein filed by Federal Trade Commission, deny that they or either of them is violating or has violated the provisions of the Federal Trade Commission Act and further deny each and every material allegation of the Complaint except as otherwise set forth in this Answer, and for further answer to said Complaint represent as follows:

Count I.

Paragraph One: Respondents admit that for some years prior to June 1, 1940, Rigid Steel Conduit Association was an unincorporated trade association and aver that the
135 said association was formed and used to promote the legitimate interests of its members and to improve the quality and standards of rigid steel conduit. Said association dissolved as of June 1, 1940. Respondents deny that said association was used in furtherance of the unlawful acts, things, practices and methods charged in the Complaint.

Respondents admit that for a period of time between 1936 and 1938, Herbert S. Blake acted as president of Rigid Steel Conduit Association.

Respondents admit that I. A. Bennett was, for a period of time during the existence of Rigid Steel Conduit Association, chairman of the Board of Directors of said Association. I. A. Bennett resigned as chairman of said Board of Directors on July 13, 1938. Respondents admit that I. A. Bennett is Vice President of National Electric Products Corporation.

Respondents aver that National Electric Products Corporation is a corporation organized and existing under the

laws of the State of Delaware and that its principal office and place of business is located at Pittsburgh, Pennsylvania. Respondents admit that National Electric Products Corporation fabricates rigid steel conduit which it sells and distributes to and through jobbers, wholesalers and others throughout the United States.

136 Respondents admit that Charles Donley is a traffic manager with offices in the Dravo Building, Pittsburgh, Pennsylvania. Respondents deny that Charles Donley assisted respondent, National Electric Products Corporation, in connection with the preparation and distribution of "freight factors" or "adders" for use in calculating delivered price quotations. Respondents aver that Charles Donley has for a number of years acted as traffic adviser to National Electric Products Corporation and has furnished National Electric Products Corporation with actual freight rates compiled from official tariffs.

Respondents admit that the American Circular Loom Company, a corporation organized and existing under the laws of the State of Delaware, was for some years prior to December 1936, a wholly owned subsidiary of National Electric Products Corporation. Respondents aver that in December 1936, American Circular Loom Company ceased business and was legally dissolved.

Respondents admit that National Electric Products Corporation has shipped rigid steel conduit from Pittsburgh, Pennsylvania. Respondents admit that each of respondent "conduit sellers" has been, and is, in competition with one or more of the other respondent "conduit sellers" in selling rigid steel conduit. Respondents deny that said competition has been hindered, lessened, restricted or forestalled by any understanding, agreement, combination or conspiracy and acts, things, practices or methods charged in the Complaint.

137 Respondents aver that they are without knowledge sufficient to enable them to admit or deny the remaining allegations of Paragraph One, Count I, of the Complaint as the same relate to the affiairs and business of the other respondents, and therefore demand proof thereof at the trial of this cause if the same be material.

Respondents deny each and every allegation of Paragraph One, Count I, of the Complaint except as above admitted or qualified.

Paragraph Two: Respondents admit that Organization Service Corporation and certain of its officers including

Herbert S. Blake, acted for a period of time between 1936 and 1938 in an advisory capacity to Rigid Steel Conduit Association. Respondents deny that Organization Service Corporation, or its officers, organized, managed or directed Rigid Steel Conduit Association.

Respondents deny that Organization Service Corporation, its officers, employees or agents, have assisted, advised, managed, directed or otherwise cooperated with these respondents in carrying out any unlawful acts, methods, policies, rules, and practices charged in the Complaint and further deny that competition among respondent "conduit sellers" has been hindered, suppressed or lessened.

138 Respondents aver that they are without knowledge sufficient to enable them to admit or deny the remaining allegations of Paragraph Two, Count I, of the Complaint and therefore demand proof thereof at the trial of this cause if the same be material.

Paragraph Three: Respondents aver that they are without knowledge sufficient to enable them to admit or deny the allegations of Paragraph Three, Count I, of the Complaint and therefore demand proof thereof at the trial of this cause if the same be material.

Paragraph Four: Respondents admit that Paragraph Four, Count I, of the Complaint describes, with substantial accuracy, rigid steel conduit and the uses for which it is adapted.

Respondents aver that the annual volume of rigid steel conduit in recent years has varied greatly, but admit that in certain years it has reached or exceeded 120,000 tons a year.

Paragraph Five: Respondents deny each and every allegation of Paragraph Five, Count I, of the Complaint.

Paragraph Six: Respondents deny each and every allegation of Paragraph Six, Count I, of the Complaint.

139 Paragraph Seven: Respondents deny each and every allegation of Paragraph Seven, Count I, of the Complaint.

Count II.

Paragraph One: Respondents admit that National Electric Products Corporation fabricates conduit and ships the same from Pittsburgh, Pennsylvania; and it sells conduit and ships the same to customers located in the various States of the United States. Respondents admit that

National Electric Products Corporation is in competition with the other respondent conduit manufacturers, but deny that said competition has been hindered, restrained, lessened, suppressed, frustrated, eliminated or prevented by any acts, things practices or methods set forth in the Complaint.

Respondents aver that they are without knowledge sufficient to enable them to admit or deny the remaining allegations of Paragraph One, Count II, of the Complaint as the same relate to the affairs and business of the other respondents, and therefore demand proof thereof at the trial of this cause if the same be material.

Respondents deny each and every allegation of Paragraph One, Count II, of the Complaint except as above admitted or qualified.

140 Paragraph Two: Respondents admit that National Electric Products Corporation customarily sells conduit on a delivered price basis. This practice is followed for the convenience of its customers who are interested in securing accurate prices of conduit delivered at the destination points. Notwithstanding that for the convenience of the great majority of its customers it is the practice of respondent, National Electric Products Corporation, to quote delivered prices on rigid steel conduit, at the same time National Electric Products Corporation does and is ever willing to quote prices on said conduit F.O.B. its factory. Quantities of conduit have been sold by National Electric Products Corporation on the basis of F.O.B. factory prices.

Respondents admit that the delivered price of conduit quoted by National Electric Products Corporation include a price at one or more basing points plus the freight from basing point to the point of destination. Respondents on information and belief admit that certain other "conduit sellers" have, from time to time, followed a similar method of quoting delivered prices on conduit, but respondents deny that uniformity in delivered prices of all respondent "conduit sellers" for a given time and destination is inherent in, and a necessary result of the use of basing-point-delivered-price-quotations. Respondents aver that the

141 delivered price quotations on conduit of the various respondent "conduit sellers" are not uniform for any given time and destination, but on the contrary said prices vary greatly.

Respondents are without knowledge sufficient to enable them to admit or deny the allegations of Paragraph Two, Count II, of the Complaint as the same relate to the affairs and business of the other respondents except as above set forth and therefore demand proof thereof at the trial of this cause if the same be material.

Respondents deny each and every allegation of Paragraph Two, Count II, of the Complaint except as above admitted or qualified.

Paragraph Three: In answer to Paragraph Three, Count II, of the Complaint respondents aver that in selling conduit National Electric Products Corporation is obliged to meet the prices at which conduit is sold by its competitors at any given point. As a result of this competitive situation in the industry respondents admit that the delivered prices of conduit of National Electric Products Corporation vary among the different points at which it sells conduit.

Respondents aver that they are without knowledge sufficient to enable them to admit or deny the allegations of Paragraph Three, Count II, of the Complaint as the
142 same relate to the affairs and business of the other respondents and therefore demand proof thereof at the trial of this cause if the same be material.

Respondents deny each and every allegation of Paragraph Three, Count II, of the Complaint except as above admitted or qualified.

Paragraph Four: Respondents deny each and every allegation of Paragraph Four, Count II, of the Complaint.

Paragraph Five: In further answer to said Complaint respondents aver that the method of price quotations on conduit employed by respondent, National Electric Products Corporation, including the use of a basing point system, is fair and equitable to all of the respondent's customers and is in the public interest.

Respondents further aver that it is beyond the powers granted by law to this Commission to attack the method of quoting prices on conduit employed by respondent, National Electric Products Corporation; that the method of quoting delivered prices, including the use of a basing point system, is a widely-accepted method of pricing which has been examined by Congress and has never been disapproved by that body.

143 Respondents aver that the method of pricing, apparently advocated by the Commission, if adopted by

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respondent, National Electric Products Corporation, and the other respondent "conduit sellers", would seriously confuse and disrupt the conduit market to the detriment of the "conduit sellers" and their customers, would tend to restrict competition among the "conduit sellers" and would produce monopolistic conditions in the industry.

Wherefore, these respondents pray that the Complaint be dismissed.

I. A. Bennett,
National Electric Products
Corporation,

By James M. Houston,
2137 Oliver Building
Pittsburgh, Pennsylvania.

149 UNITED STATES OF AMERICA.

BEFORE THE FEDERAL TRADE COMMISSION

* * (Caption 4452) * *

ANSWER OF RESPONDENT LACLEDE STEEL COMPANY.

Comes now the Respondent Laclede Steel Company, and without waiving but expressly reserving the right to move to dismiss the complaint for lack of jurisdiction, makes answer to said complaint as follows:

As to Count I.

One: Answering Paragraph One of Count I:

Respondent alleges that it is without knowledge or information sufficient to form a belief, and therefore denies that Respondent Rigid Steel Conduit Association is an unincorporated trade association with its offices and principal place of business located at 17 East 42nd Street in the city of New York, New York, and that it was formed in
1934 for the purpose alleged, and that it has included
150 among its membership the Respondents named in said
Paragraph One;

Respondent admits, on information and belief, that the Respondents named in Paragraph One of Count I of said

complaint manufacture substantially all rigid steel conduit produced in the United States;

Respondent denies that it has at any time made use of the offices and other facilities of the Respondent Rigid Steel Conduit Association for actively advising, assisting and cooperating with all members of that association and others in the industry in furtherance of any of the alleged unlawful acts, things, practices or methods set forth in the complaint, or made use of any of the facilities of the Rigid Steel Conduit Association for any such purpose;

Respondent admits that Respondent Laclede Steel Company and Respondent Laclede Tube Company are corporations organized and existing under the laws of the State of Missouri with their principal offices and places of business located in the Arcade Building in the city of St. Louis, Missouri, and that the Respondent Laclede Steel Company, on or about December 1, 1936, acquired the assets, ownership and business of the Laclede Tube Company, a Delaware corporation, but Respondent Laclede
151 Steel Company denies, on information and belief, that said Laclede Tube Company had maintained a membership in Respondent Rigid Steel Conduit Association at any time subsequent to June 1, 1936, and avers that said Laclede Tube Company, a Delaware corporation, resigned its membership in the said Rigid Steel Conduit Association on or about June 1, 1936; and Respondent denies that said Laclede Tube Company, a Delaware corporation, was engaged in conduit manufacture and sale to jobbers and others throughout the United States at any time subsequent to December 1, 1936;

Respondent Laclede Steel Company denies that it has maintained membership in said Respondent Rigid Steel Conduit Association or that it was ever a member of said association;

Respondent Laclede Steel Company admits that it caused Laclede Tube Company, a Delaware corporation, to be dissolved on or about December 1, 1936, and immediately caused to be formed the Respondent Laclede Tube Company, a Missouri corporation, but denies that the said Laclede Tube Company, a Missouri corporation, was ever a member of the Respondent Rigid Steel Conduit Association;

152 Respondent denies that Charles Donley has at any time served as advisor to and traffic manager for this

Respondent in connection with the preparation and distribution of compilations of freight factors or "adders" for use in calculating delivered price quotations, or otherwise; and Respondent alleges that it is without knowledge or information sufficient to form a belief, and therefore denies the remaining allegations of Paragraph One with respect to the activities of said Charles Donley;

Respondent admits that during the six years last past it has been engaged in the manufacture of rigid steel conduit at Alton, Illinois, near St. Louis, Missouri; that it sells and distributes same principally through jobbers or wholesalers who buy and sell electrical supplies, including conduit, outright and on a consignment basis; and that it has shipped such conduit to its customers located in states of the United States other than the State of Illinois;

Respondent alleges that it is without knowledge or information sufficient to form a belief, and therefore denies that many such wholesalers or jobbers to whom Respondent sells are members of Respondent National Electric Wholesalers Association;

153 Respondent admits that its wholesale customers resell principally to electrical contractors and to Government agencies and that each of the Respondent "conduit sellers" has been and is in competition with one or more of the other "conduit sellers" in making or seeking to make sales of rigid steel conduit in commerce between and among the various states of the United States and the District of Columbia, but Respondent denies that said competition has been hindered, lessened, restricted or forestalled by the understanding, agreement, combination or conspiracy and acts, things, practices and methods done and carried out pursuant thereto, and in furtherance thereof by this Respondent, as set forth in the complaint, or otherwise;

Respondent denies that it acts collusively or collectively or engages or has engaged in monopolistic practices in the production, price or sale of rigid steel conduit, or that this Respondent, either alone or in conjunction with Respondent "conduit sellers" and Respondent "conduit wholesalers" has been or is in a position to dominate and manipulate the price quotations which are made to unorganized purchasers of rigid steel conduit, or that it has

used or promoted or otherwise furthered any unlaw-
154 ful acts, things, practices or methods alleged in the complaint, and this Respondent also denies that any of the other Respondents named in the complaint has cooperated with or assisted, or attempted to cooperate with or assist, this Respondent in using or promoting or otherwise furthering any of said unlawful acts, things, practices or methods;

This Respondent alleges that it is without knowledge or information sufficient to form a belief, and therefore denies each and every allegation contained in Paragraph One of Count I, and in every subdivision thereof, except as hereinbefore specifically admitted or otherwise answered.

Two: Answering Paragraph Two of Count I:

Respondent denies that Respondent Organization Service Corporation has at any time served as organizer, manager, director of or advisor to this Respondent, and denies that said Respondent Organization Service Corporation, or its officers, employees or agents, have at any time aided, assisted, advised, managed, directed and otherwise cooperated with this Respondent, or that Respondent has in any manner partici-
pated, in carrying out the alleged unlawful acts, meth-
155 ods, policies, rules and practices as set forth in the complaint, in such manner as to directly and substantially hinder, suppress and lessen competition among such Respondent "conduit sellers" who are engaged in commerce, or in any other manner;

Further answering said Paragraph Two, Respondent alleges that it is without knowledge or information sufficient to form a belief, and therefore denies all the remaining allegations contained on said Paragraph Two and in each subdivision thereof.

Three: Answering Paragraph Three of Count I:

Respondent denies that competition between "conduit wholesalers" in making or seeking to make sales of rigid steel conduit in commerce between and among the various states of the United States and in the District of Columbia has been hindered, lessened, restricted or forestalled by any understanding, agreement, combination or conspiracy and acts, things, practices, and methods done and carried on in pursuance thereto and in furtherance thereof by this Respondent, whether as alleged in said paragraph or otherwise;

Further answering said Paragraph Three, Respondent alleges that it is without knowledge or information
156 sufficient to form a belief, and therefore denies all the remaining allegations contained in said Paragraph Three, and in each and every subdivision thereof.

Four: Answering Paragraph Four of Count I:

Respondent alleges that it is without knowledge or information sufficient to form a belief, and therefore denies that in recent years volumes exceeding 125,000 tons annually have been sold and distributed in the United States by the Respondent "conduit sellers", but admits the remaining allegations of said Paragraph Four.

Five: Answering Paragraph Five of Count I:

Respondent denies each and every allegation therein contained insofar as any of said allegations relate to this Respondent, and further answering said Paragraph Five, Respondent alleges that it is without knowledge or information sufficient to form a belief, and therefore denies all of the remaining allegations of said Paragraph Five.

Six: Answering Paragraph Six (and all subdivisions thereof) of Count I:

Respondent denies each and every allegation therein contained insofar as any of said allegations relate to this Respondent, and further answering Paragraph Six, Respondent alleges that it is without knowledge or infor-
157 mation sufficient to form a belief, and therefore denies all of the remaining allegations contained in said Paragraph Six and each and every subdivision thereof.

Seven: Answering Paragraph Seven (and all subdivisions thereof) of Count I:

Respondent specifically denies each and every allegation therein contained insofar as any of said allegations relate to this Respondent, and further answering said Paragraph Seven, Respondent alleges that it is without knowledge or information sufficient to form a belief, as to any allegations of said Paragraph Seven insofar as they relate to others than this Respondent, and therefore Respondent denies all of the remaining allegations contained in said Paragraph Seven and each and every subdivision thereof.

As to Count II.

One: Answering Paragraph One of Count II:

Respondent admitts that it has, for a period of several years last past, manufactured, sold and shipped from Alton, Illinois, and that it now manufactures, sells and ships from Alton, Illinois, rigid steel conduit, and that a portion of said conduit is shipped to Respondent's customers located in several states of the United States other than the State of Illinois, and further admits that in the
158 course of such business it is in competition with other Respondents named in the complaint, but Respondent denies that competition in the sale of conduit has been in any way hindered, restrained, lessened, suppressed, frustrated, eliminated or prevented by any things, practices or methods of this Respondent alleged in the complaint or otherwise;

Further answering said Paragraph One of Count II, Respondent alleges that it is without knowledge or information sufficient to form a belief, and therefore denies all the remaining allegations of said paragraph.

Two: Answering Paragraph Two of Count II:

Respondent alleges that it commonly sells rigid steel conduit at delivered prices and that it commonly quotes prices therefor, based on its announced prices therefor, at certain so-called basing points, and that to any basing point price quoted by Respondent the amount of freight from such basing point to the place of delivery is added in arriving at the quoted delivered price, but that the price at which Respondent's sale are made are determined by competition; and further answering said Paragraph Two, Respondent specifically denies each and every allegation therein contained, and which has not been specifically admitted, insofar as any of said allegations relate to this Respondent, and as to any allegations of said Paragraph Two
159 insofar as they relate to others than this Respondent, Respondent alleges that it is without knowledge or information sufficient to form a belief, and therefore denies all the remaining allegations of said Paragraph Two.

Three: Answering Paragraph Three of Count II:

Respondent admits that in selling rigid steel conduit to purchasers at certain locations at which at the same time similar conduit is offered to them for sale by other sellers thereof, it must, and does, in order to meet the competition of such other sellers to purchasers at such locations,

sell such conduit at delivered prices lower than the delivered price at which this Respondent can, and does, currently sell such conduit to purchasers at other locations at which the competitive prices to be met are higher, and that some of such latter locations may be nearer to this Respondent's place of manufacture of such conduit than are some of such first-mentioned locations; but this Respondent denies that by so selling rigid steel conduit it deprives any customer of price advantage of any kind. Except as so specifically admitted, this Respondent denies each and every allegation contained in Paragraph Three of said Count II insofar as they relate or refer to
160 this Respondent, and Respondent denies, upon information and belief, each and every allegation of said Paragraph Three not hereinbefore specifically answered, except that Respondent admits, on information and belief, that other Respondents referred to in said Count II as "conduit sellers", in meeting competition, sell such conduit at different delivered prices at different places of delivery.

Four: Answering Paragraph Four of Count II:

Respondent reiterates each and every denial contained in the foregoing paragraphs of this answer to said Count II and specifically denies each and every allegation in said Paragraph Four contained, and further answering said Paragraph Four, Respondent avers that the above-mentioned policy and practice of this Respondent in meeting competitive prices serves to broaden the competitive field in which this Respondent can sell its rigid steel conduit, that said policy and practice are in all respects lawful and within the rights of this Respondent to meet competitive prices, and in so doing to sell its products at different locations and to different customers at such different prices as may be required to that end.

Wherefore this Respondent, having fully answered, asks that the complaint of the Federal Trade Commission in
161 this proceeding be dismissed and this Respondent discharged.

Laclede Steel Company,
By J. R. Tyler,
Vice President.

Counsel for Respondent:
Laclede Steel Company,
Milton H. Tucker of
Lewis, Rice, Tucker, Allen and Chubb,
208 North Broadway,
St. Louis, Missouri.

170 UNITED STATES OF AMERICA.

Before the Federal Trade Commission.

* * (Caption—4452.) * *

ANSWER OF RESPONDENTS WALKER BROTHERS AND H. S. WALKER.

Comes now the respondents, Walker Brothers, a Pennsylvania corporation, and H. S. Walker (named in the complaint of the Federal Trade Commission in the above entitled matter as Walker Brothers and H. S. Walker, respectively, and hereinafter collectively referred to as "these respondents"), by Montgomery & McCracken, their attorneys, and, reserving the right to move to dismiss said complaint for lack of jurisdiction, answer said complaint as follows:

Answer to Count I.

1. Answering paragraph One of Count I these respondents admit that Rigid Steel Conduit Association formerly was an unincorporated association and had
171 an office located at No. 17 East 42nd Street, in the City of New York, State of New York; that it was formed in or prior to the year 1934 lawfully to promote the interests of its members; that this respondent, Walker Brothers, was a member thereof until about June 1940, when said association was dissolved; that the respondents, Central Tube Company, Enameled Metals Company, Fretz-Moon Tube Company, Inc., Garland Manufacturing Company, General Electric Company, Clayton Mark & Company, Steelduct Company, Youngstown Sheet and Tube Company, Cohoes Rolling Mill Company, Laclede Tube Company, and Triangle Conduit and Cable Company, Inc., were formerly and during various periods of time not now known to these respondents members of said Association; that those of said respondents who manufacture rigid steel conduits, together with this respondent, Walker Brothers, and Laclede Steel Company, manufacture substantially all the rigid steel conduit produced in the United States; that at various time prior to June 1940 Lawrence R. Quinn was and acted as the Treasurer and a member of

the Board of Directors of said Association; that at various times prior to June 1940 Paul Weiss was and acted as
172 Assistant Treasurer of said Association; that one George H. Sicard served as Executive Secretary of said Association from the time of its formation in 1934 for a period of approximately two years; that Robert S. Booth succeeded George H. Sicard as Executive Secretary of said Association and acted in that capacity at various times prior to June 1940; that at various times prior to June 1940, I. A. Bennett was and acted as Chairman of the Board of Directors of the said Association; that at various times prior to June 1940, J. M. Barton, H. G. Morrow, H. S. Walker, and A. E. Newman were and acted as members of the Board of Directors of the said Association; that this respondent, Walker Brothers, is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania and has its principal office and place of business in Conshohocken, Pennsylvania; that this respondent, H. S. Walker, is and has been during the six years last past President of this respondent, Walker Brothers; that this respondent, Walker Brothers, manufactures rigid steel conduit and sells and distributes it to its customers in various states of the United States; that its customers include jobbers and wholesalers and
173 other purchasers of rigid steel conduit and that some of the sales thereof made by this respondent, Walker Brothers, are made through jobbers; that at various times prior to June 1940, Frank C. Hodkinson attended and participated in meetings of members of said Association as a representative of American Circular Loom Company, which formerly had an office at 205 East 42nd Street in the City of New York, N. Y., and was from time to time a member of one or more committees of said Association; that during the six years last past this respondent, Walker Brothers, has engaged in the manufacture of rigid steel conduit at Conshohocken, Pennsylvania, and has shipped such conduit to its customers, some of whom have been and are located in states of the United States other than the state of origin of the shipments thereof; upon information and belief and only for the purposes of this proceeding, that some of the jobbers and wholesalers to whom this respondent, Walker Brothers sells rigid steel conduit manufactured by it are members of The National Electrical Wholesalers Association; and that this respond-

ent, Walker Brothers, has been and is in competition with one or more of the other respondents referred to in 174 the complaint as conduit sellers in making or seeking to make sales of rigid steel conduit in and among various states of the United States and in the District of Columbia.

These respondents severally deny, upon information and belief, that said Rigid Steel Conduit Association now is a trade association and that it has its offices and place of business located at No. 17 East 42nd Street, in the City of New York, State of New York, and that it has officers as alleged in the complaint. These respondents aver, upon information and belief, that said Association was dissolved and disbanded at some time prior to June, 1940, and since such time has had no office or place of business at the location mentioned in said paragraph One or elsewhere.

These respondents severally deny that either of them has at any time engaged in, or acted, advised, assisted or co-operated with any others in furtherance of any unlawful acts, things, practices or methods alleged in the complaint, or made use of any offices or facilities of Rigid Steel Conduit Association for any such purpose.

These respondents severally deny that either of 175 them has used or promoted or otherwise furthered any unlawful acts, things, practices or methods alleged in the complaint and they also deny that any of the other respondents named in the complaint has co-operated with or assisted, or attempted to co-operate with or assist either of them in using or promoting or otherwise furthering any of said unlawful acts, things, practices or methods.

These respondents severally deny that competition in the sale of rigid steel conduit between and among the various states of the United States or in the District of Columbia has been hindered, lessened, restricted or forestalled by any understanding, agreement, combination or conspiracy, or by any acts, things, practices or methods done or carried on in pursuance or in furtherance of any understanding, agreement, combination or conspiracy, joined in or taken part in by either of these respondents as alleged in the complaint or otherwise.

They severally deny that these respondents act collusively or collectively or engage or have engaged in monopolistic practices in the production, pricing or selling of

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rigid steel conduit and that these respondents, either
176 alone or in conjunction with any other sellers of such conduit, have been or are in a position to dominate and manipulate at any time or place the price quotations made to purchasers of such conduit.

These respondents know of Charles Donley, who has an office in the Dravo Building in the City of Pittsburgh, Pennsylvania, as an advisor on traffic matters for shippers; they deny that said Charles Donley has at any time served as advisor to, or as traffic manager for either of these respondents, or, in so far as is known to these respondents, for said Rigid Steel Conduit Association, in connection with the preparation and distribution of compilations of freight factors or "adders" for use in calculating delivered price quotations, as alleged in said paragraph One.

Except as hereinbefore specifically admitted or otherwise answered, these respondents severally deny each and every allegation contained in said paragraph One of Count I in so far as they relate or refer to either of them and, except in so far as the allegations of said paragraph One are thus specifically answered, these respondents are without knowledge of the allegations thereof, including all subdivisions thereof.

2. These respondents severally deny that the re-
177 spondent Organization Service Corporation or its officers, employees and agents, or any of them, have at any time aided, assisted, advised, managed, directed or otherwise co-operated with either of them in carrying out any of the acts, methods, policies, rules or practices as set forth in the complaint, whether alleged to be unlawful or otherwise, and further deny, in so far as it relates or refers to these respondents, the allegation of paragraph Two of Count I of the complaint that competition among the respondents referred to in the complaint as conduit sellers has been hindered, suppressed and lessened. These respondents are without knowledge as to all the other allegations of said paragraph Two.

3. These respondents are without knowledge as to the allegations of paragraph Three of Count I, including all subdivisions thereof, except the allegations that the Commission names and includes as respondents in this proceeding the various companies named in subdivisions 1 to 13, inclusive, of said paragraph, and except that these respondents severally deny that any competition referred to

in said paragraph has been hindered, lessened, re-
178 stricted or forestalled by any understanding, agree-
ment, combination, or conspiracy, or by any acts, things, practices or methods done or carried on in pursuance of, or in furtherance of, any understanding, agreement, combination or conspiracy joined in or taken part in or done or carried on by either of these respondents as alleged in said paragraph or otherwise.

4. These respondents admit for the purposes of this proceeding as substantially correct the allegations of paragraph Four of Count I, except that these respondents are without knowledge as to the allegation thereof concerning the quantity of rigid steel conduit sold and distributed annually in the United States by the respondents who are referred to in the complaint as conduit sellers, other than that in some years in the last six years more than 125,000 tons thereof have been so sold and distributed by them.

5. These respondents severally deny each and every allegation contained in paragraph Five of Count I in so far as they relate or refer to either of them. Except in so far as the allegations of said paragraph Five are thus specifically answered, these respondents are without
179 knowledge as to the allegations thereof.

6. These respondents severally deny each and every allegation contained in paragraph Six of Count I, including subdivisions (1) to (19) inclusive, thereof, in so far as they relate or refer to either of them. Except in so far as the allegations of said paragraph Six are thus specifically answered, these respondents are without knowledge as to the allegations thereof.

7. Answering paragraph Seven of Count I, these respondents severally repeat and reassert each and every denial contained in the foregoing paragraphs of this Answer. They severally deny each and every allegation contained in said paragraph Seven in so far as the allegations thereof, or any of them, relate or refer to either of them, or have reference to any acts, things, practices, methods or agreements alleged to have been engaged in, or joined or taken part in, by either of them. Except in so far as the allegations of said paragraph Seven are thus specifically denied, these respondents are without knowledge as to the allegations thereof.

180 Answer to Count II.

1. This respondent, Walker Brothers, admits that it manufactures rigid steel conduit at Conshohocken, Pennsylvania, and that part of such conduit is shipped by it from said Conshohocken, Pennsylvania, to its customers located in states of the United States other than said State of Pennsylvania; it admits that in the sale of such rigid steel conduit it is in competition with other respondents named in the complaint herein. It denies that competition in the sale thereof by this respondent, Walker Brothers, has been in any respect hindered, restrained, lessened, suppressed, frustrated, eliminated or prevented by any acts, things, practices or methods alleged in the complaint, or otherwise. Except as so specifically otherwise answered, these respondents severally deny each and every allegation of paragraph One of Count II of the complaint in so far as they relate or refer to either of them; and, except in so far as the allegations of said paragraph One are thus specifically answered, these respondents are without knowledge as to the allegations of said paragraph.

2. This respondent, Walker Brothers, admits that it commonly sells rigid steel conduit at delivered prices;
181 that it commonly quotes prices therefor based on its announced prices therefor at certain so-called basing points; and that to any basing point price quoted by this respondent the amount of freight from such basing point to the place of delivery is added to arrive at the delivered price. Except as so specifically admitted, these respondents severally deny each and every allegation of paragraph Two of said Count II.

3. This respondent, Walker Brothers, admits that in selling rigid steel conduit to purchasers at certain locations at which at the same time similar conduit is offered to them for sale by other sellers thereof, it must, and does, in order to meet the competition of such other sellers to purchasers at such locations, sell such conduit at delivered prices lower than the delivered price at which this respondent, Walker Brothers, can, and does, currently sell such conduit to purchasers at other locations at which the competitive prices to be met are higher, and that some of such latter locations may be nearer to this respondent's, Walker Brothers, place of manufacture of such conduit than are some of such first-mentioned

locations; but this respondent, Walker Brothers,
182 denies that by so selling rigid steel conduit it deprives any customer of price advantages of any kind. Except as so specifically admitted, these respondents severally deny each and every allegation contained in paragraph Three of said Count II in so far as they relate or refer to either of them. These respondents severally deny upon information and belief each and every allegation of said paragraph Three not hereinbefore specifically answered, except that these respondents admit on information and belief that other respondents referred to in said Count II as conduit sellers in meeting the competition sell such conduit at different delivered prices at different places of delivery.

4. Answering paragraph Four of said Count II, these respondents severally repeat and reassert each and every denial contained in the foregoing paragraphs of this Answer to said Count II and deny each and every allegation of said paragraph Four. To the contrary of said allegations this respondent, Walker Brothers, avers that its above mentioned policy and practice in meeting competitive prices serves to broaden the competitive field
183 in which it can sell its rigid steel conduit, that said policy and practice are in all respects lawful and within its rights to meet competitive prices, and in so doing to sell its products at different locations and to different customers at such different prices as may be required to that end.

Wherefore these respondents severally demand that the complaint of the Federal Trade Commission in this proceeding be dismissed.

Walker Brothers,
By H. S. Walker,
President.

H. S. Walker,
Conshohocken, Pennsylvania.

Montgomery & McCracken,
Attorneys for Respondents,

Walker Brothers and
H. S. Walker,
1500 Morris Building,
Philadelphia, Pennsylvania.

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184 BEFORE THE FEDERAL TRADE COMMISSION.

* * (Caption—4452.) * *

ANSWER OF RESPONDENT CLAYTON MARK & COMPANY.

Comes now the respondent, Clayton Mark & Company, a corporation, by its attorneys, and reserving the right to move to dismiss said complaint or either count thereof for lack of jurisdiction, answers said complaint and each count and paragraph thereof as follows:

Count I.

Paragraph One: Respondent admits that it is a corporation organized and existing under the laws of the State of Delaware with its principal office and place of business located at 1900 Dempster Street, Evanston, Illinois; that it sells and distributes rigid steel conduit to its customers throughout the United States; that it is in competition with other respondents herein in making sales of said rigid steel conduit.

Respondent denies that Rigid Steel Conduit Association is an unincorporated trade association with offices or place of business in New York City; that it is a member of said alleged Rigid Steel Conduit Association; that it, until
185 June 1, 1940, made use of the offices or facilities of said alleged Rigid Steel Conduit Association for any purpose; that it manufactures rigid steel conduit; that respondent, Charles Donley, has served as advisor to and traffic manager for this respondent; that competition in making or seeking to make sales of rigid steel conduit has been hindered, lessened, restricted or forestalled in any manner by any understanding, agreement, combination or conspiracy, or any acts, things, practices or methods done or carried on in pursuance thereof or in any other manner; that it acted or acts collusively and collectively, or in any other manner engaged or engages in monopolistic practices or that it is in a position to or does dominate or manipulate the price quotations to purchasers of rigid steel conduit.

Respondent has no information or knowledge sufficient to form a belief as to the remaining allegations of Para-

graph One of Count I of the complaint herein and therefore neither admits nor denies the same but if the same become material at the trial of this cause, demands strict proof thereof.

Paragraph Two: Respondent denies that the respondent, Organization Service Corporation, has aided, assisted, advised, managed, directed, or otherwise cooperated with this respondent or that this respondent has aided, assisted, advised, managed, directed or otherwise cooperated with respondent, Organization Service Corporation in carrying out any unlawful acts, methods, policies, rules or practices directly or substantially or in any other manner hindering, suppressing or lessening competition in commerce.

186 Respondent has no information or knowledge sufficient to form a belief as to the remaining allegations of Paragraph Two of Count I of the complaint herein and therefore neither admits nor denies the same but if the same become material in the trial of this cause, demands strict proof thereof.

Paragraph Three: Respondent admits that each of the alleged respondent conduit wholesalers has been and is in competition with one or more of the other respondent conduit wholesalers.

Respondent denies that competition has been hindered, lessened, restricted or forestalled by any understanding, agreement, combination or conspiracy or acts, things, practices or methods done or carried on in pursuance thereof. Respondent alleges that it does not sell or market any of its products through the respondents named in Paragraph Three of Count I of the complaint herein.

Further answering said complaint respondent alleges that it has no information or knowledge sufficient to form a belief as to the remaining allegations of Paragraph Three of Count I of the complaint herein and therefore neither admits or denies the same but if the same become material in the trial of this cause, demands strict proof thereof.

Paragraph Four: Respondent admits that rigid steel conduit is made and used as alleged in Paragraph Four.

Respondent believes in some years considerable amounts of rigid steel conduit are sold and distributed but has no information or knowledge sufficient to form a belief as to the volume of tons of rigid steel conduit sold and distributed in the United States and therefore neither

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187 admits nor denies said allegations, but if the same become material at the trial of this cause, demands strict proof thereof.

Paragraph Five: Respondent denies all of the allegations of Paragraph Five of Count I of the complaint herein.

Paragraph Six: Respondent denies all of the allegations of Paragraph Six of Count I of the complaint herein.

Paragraph Seven: Respondent denies all of the allegations of Paragraph Seven of Count I of the complaint herein.

Count II.

Paragraph One: Respondent admits that it ships and sells rigid steel conduit to its customers located in the several states of the United States; that in the course of making such sales it is in competition with other named respondents herein.

Respondent denies that it manufactures rigid steel conduit; that competition in the sale of said rigid steel conduit has been hindered, restrained, lessened, suppressed, frustrated, eliminated or prevented by any acts, things, practices or methods set forth in Count II of the complaint herein or in any manner.

Respondent has no information or knowledge sufficient to form a belief as to the remaining allegations of Paragraph One of Count II of the complaint herein and therefore neither admits nor denies the same but if the same become material in the trial of this cause, demands strict proof thereof.

Paragraph Two: Respondent admits that it quotes its customers of rigid steel conduit delivered prices.

188 Respondent denies that it with knowledge that other respondents simultaneously do likewise, refrains from quoting f. o. b. prices that are independent of and unrelated to price quotations determined from a basing point formula; that uniformity in delivered price quotations is inherent in and a necessary result of a method or system of basing point delivered price quotations.

Respondent has no information or knowledge sufficient to form a belief as to the remaining allegations of Paragraph Two of Count II of the complaint herein and therefore neither admits nor denies the same but if the same

become material in the trial of this cause, demands strict proof thereof.

Paragraph Three: Respondent denies all of the allegations in Paragraph Three of Count II of the complaint herein.

Paragraph Four: Respondent denies all of the allegations of Paragraph Four of Count II of the complaint herein.

This respondent, further answering all of the paragraphs in each of the two Counts of the complaint herein, alleges that the so-called basing point method or system is the natural result of basic economic conditions in the Conduit industry and does not result in the absence of price competition, cause monopolistic control over prices or unfair or discriminatory treatment between customers and does not cause or constitute unfair methods of competition; that respondent's delivered prices on rigid steel conduit are determined by active and energetic competition between sellers of said products and delivered
189 prices are quoted to its customers because they demand and need to know the cost to them of said products at their respective places of business; that the complainant herein cannot order this respondent to cease and desist from meeting and competing with prices of its competitors. Respondent further alleges that none of its acts constitute unfair methods of competition within the intent and meaning of the Federal Trade Commission Act or any parts thereof.

Wherefore, Respondent, having fully answered, prays that the complaint herein be dismissed and this respondent discharged.

Clayton Mark & Company,
By Ernest S. Ballard,
120 So. LaSalle Street,
Chicago, Illinois.

P. C. King, Jr.,
707 Munsey Building,
Washington, D. C.

Pope and Ballard,
120 So. LaSalle Street,
Chicago, Illinois.

192 UNITED STATES OF AMERICA.

BEFORE THE FEDERAL TRADE COMMISSION
* * (Caption 4452) * *

ANSWER OF RESPONDENT THE YOUNGSTOWN SHEET AND TUBE COMPANY.

Comes now the respondent The Youngstown Sheet and Tube Company, an Ohio corporation (named in the complaint of the Federal Trade Commission in the above-entitled matter as Youngstown Sheet and Tube Company), by Cravath, de Gersdorff, Swaine & Wood, its attorneys, and, reserving the right to move to dismiss said complaint for lack of jurisdiction, answers said complaint as follows:

Answer to Count I.

1. Answering paragraph One of Count I this respondent admits that Rigid Steel Conduit Association formerly was an unincorporated association and had an office located at No. 17 East 42nd Street, in the City of New York, State of New York; that it was formed in or prior to
193 the year 1934 lawfully to promote the interests of its members; that this respondent was a member thereof until August, 1936; that the respondents Central Tube Company, Enameled Metals Company, Fretz-Moon Tube Company, Inc., Garland Manufacturing Company, General Electric Company, Clayton Mark & Company, Steelduct Company, Walker Brothers, Cohoes Rolling Mill Company, Laclede Tube Company, and Triangle Conduit and Cable Company, Inc., were formerly and during various periods of time not now known to this respondent members of said Association; that those of said respondents who manufacture rigid steel conduit, together with this respondent, and the respondent Laclede Steel Company, manufacture substantially all the rigid steel conduit produced in the United States; that at various times prior to August, 1936, Lawrence R. Quinn was and acted as the Treasurer and a member of the Board of Directors of said Association; that one George H. Sicard served as Executive Secretary of said Association for a period of approximately two years which began some time in the year 1934; upon in-

formation and belief, and for the purposes of this proceeding, that Clayton Mark & Company is a corporation organized and existing under the laws of the State of Delaware and has an office and place of business at No. 1900 Dempster Street, in the City of Evanston, Illinois, and that it sells and distributes rigid steel conduit to its cus-
194 tomers in various states of the United States; that this respondent is a corporation organized and existing under the laws of the State of Ohio and has its principal office and place of business in the Stambaugh Building, in the City of Youngstown, Ohio; that this respondent manufactures rigid steel conduit and sells and distributes it to its customers in various states of the United States; that its customers and those of said Clayton Mark & Company include jobbers and wholesalers and other purchasers of rigid steel conduit and that some of the sales thereof made by this respondent and by said Clayton Mark & Company are made through jobbers; that in the first two of the six years last past Frank C. Hodkinson attended and participated in meetings of members of said Association as a representative of American Circular Loom Company, which formerly had an office at 205 East 42nd Street in The City of New York, N. Y., and was from time to time a member of one or more committees of said Association; that during the six years last past this respondent has engaged in the manufacture of rigid steel conduit near, but not at, Youngstown, Ohio, and not elsewhere, and has shipped such conduit to its customers, some of whom have been and are located in states of the United States other than the state of origin of the shipments thereof; upon information and belief and only for the purposes of this proceeding, that some of the jobbers and wholesalers
195 to whom this respondent sells rigid steel conduit manufactured by it are members of The National Electrical Wholesalers Association; and that this respondent has been and is in competition with one or more of the other respondents referred to in the complaint as conduit sellers in making or seeking to make sales of rigid steel conduit in and among various states of the United States and in the District of Columbia.

This respondent denies, upon information and belief, that said Rigid Steel Conduit Association now is a trade association and that it has its offices and places of business located at No. 17 East 42nd Street, in The City of New

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York, State of New York, and that it has officers as alleged in the complaint. This respondent avers, upon information and belief, that said Association was dissolved and disbanded at some time prior to June, 1940, and since such time has had no office or place of business at the location mentioned in said paragraph One or elsewhere.

This respondent denies that this respondent has at any time engaged in, or acted, advised, assisted or cooperated with any others in furtherance of, any unlawful acts, things, practices or methods alleged in the complaint, or made use of any offices or facilities of Rigid Steel Conduit Association for any such purpose.

This respondent denies that it has used or promoted
196 or otherwise furthered any unlawful acts, things, practices or methods alleged in the complaint and this respondent also denies that any of the other respondents named in the complaint has cooperated with or assisted, or attempted to cooperate with or assist, this respondent in using or promoting or otherwise furthering any of said unlawful acts, things, practices or methods.

This respondent denies, upon information and belief, that the respondent Clayton Mark & Company manufactures rigid steel conduit; it denies that this respondent manufactures rigid steel conduit at, or ships such conduit from, either Youngstown or Cleveland, Ohio, and that this respondent sells or distributes such conduit principally through jobbers or wholesalers who buy and sell electrical supplies, including conduit, outright and on a consignment basis.

This respondent denies that competition in the sale of rigid steel conduit between and among the various states of the United States or in the District of Columbia has been hindered, lessened, restricted or forestalled by any understanding, agreement, combination or conspiracy, or by any acts, things, practices or methods done or carried on in pursuance or in furtherance of any understanding, agreement, combination or conspiracy, joined in or taken part in by this respondent as alleged in the complaint or otherwise.

It denies that this respondent acts collusively or
197 collectively or engages or has engaged in monopolistic practices in the production, pricing or selling of rigid steel conduit and that this respondent, either alone or in conjunction with any other sellers of such conduit, has

been or is in a position to dominate and manipulate at any time or place the price quotations made to purchasers of such conduit.

This respondent knows of Charles Donley, who has an office in the Dravo Building, in the City of Pittsburgh, Pennsylvania, as an advisor on traffic matters for shippers; it denies that said Charles Donley has at any time served as advisor to, or as traffic manager for, this respondent, or, in so far as is known to this respondent, for said Rigid Steel Conduit Association, in connection with the preparation and distribution of compilations of freight factors or "adders" for use in calculating delivered price quotations, as alleged in said paragraph One.

Except as hereinbefore specifically admitted or otherwise answered, this respondent denies each and every allegation contained in said paragraph One of Count I in so far as they relate or refer to this respondent and, except in so far as the allegations of said paragraph One are thus specifically answered, this respondent is without knowledge of the allegations thereof, including all subdivisions thereof.

2. This respondent denies that the respondent Or- 198 ganization Service Corporation or its officers, employees and agents, or any of them, have at any time aided, assisted, advised, managed, directed or otherwise cooperated with this respondent in carrying out any of the acts, methods, policies, rules or practices as set forth in the complaint, whether alleged to be unlawful or otherwise, and further denies, in so far as it relates or refers to this respondent, the allegation of paragraph Two of Count I of the complaint that competition among the respondents referred to in the complaint as conduit sellers has been hindered, suppressed and lessened. This respondent is without knowledge as to all the other allegations of said paragraph Two.

3. This respondent is without knowledge as to the allegations of paragraph Three of Count I, including all subdivisions thereof, except the allegation that the Commission names and includes as respondents in this proceeding the various companies named in subdivisions 1 to 13, inclusive, of said paragraph, and except that this respondent denies that any competition referred to in said paragraph has been hindered, lessened, restricted or forestalled by any understanding, agreement, combination, or conspiracy, or by any acts, things, practices or methods

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done or carried on in pursuance of, or in furtherance of, any understanding, agreement, combination or conspiracy joined in or taken part in or done or carried on by this
199 respondent, as alleged in said paragraph or otherwise.

4. This respondent admits for the purposes of this proceeding as substantially correct the allegations of paragraph Four of Count I, except that this respondent is without knowledge as to the allegation thereof concerning the quantity of rigid steel conduit sold and distributed annually in the United States by the respondents who are referred to in the complaint as conduit sellers, other than that in some years in the last six years more than 125,000 tons thereof have been so sold and distributed by them.

5. This respondent denies each and every allegation contained in paragraph Five of Count I in so far as they relate or refer to this respondent. Except in so far as the allegations of said paragraph Five are thus specifically answered, this respondent is without knowledge as to the allegations thereof.

6. This respondent denies each and every allegation contained in paragraph Six of Count I, including subdivisions (1) to (19), inclusive, thereof, in so far as they relate or refer to this respondent. Except in so far as the allegations of said paragraph Six are thus specifically answered, this respondent is without knowledge as to the allegations thereof.

7. Answering paragraph Seven of Count I, this re-
200 spondent repeats and reasserts each and every denial contained in the foregoing paragraphs of this answer. It denies each and every allegation contained in said paragraph Seven in so far as the allegations thereof, or any of them, relate or refer to this respondent, or have reference to any acts, things, practices, methods or agreements alleged to have been engaged in, or joined or taken part in, by this respondent. Except in so far as the allegations of said paragraph Seven are thus specifically denied, this respondent is without knowledge as to the allegations thereof.

Answer to Count II.

1. This respondent admits that it manufactures rigid steel conduit near, but not at, Youngstown, Ohio, namely, at Campbell, Ohio, and Struthers, Ohio, and that part of such conduit is shipped by it from said Struthers to its customers located in states of the United States other than

said State of Ohio; it admits that in the sale of such rigid steel conduit it is in competition with other respondents named in the complaint herein. It denies that competition in the sale thereof by this respondent has been in any respect hindered, restrained, lessened, suppressed, frustrated, eliminated or prevented by any acts, things, practices or methods alleged in the complaint, or other-
201 wise. Except as so specifically otherwise answered, this respondent denies each and every allegation of paragraph One of Count II of the complaint in so far as they relate or refer to this respondent; and, except in so far as the allegations of said paragraph One are thus specifically answered, this respondent is without knowledge as to the allegations of said paragraph.

2. This respondent admits that it commonly sells rigid steel conduit at delivered prices; that it commonly quotes prices therefor based on its announced prices therefor at certain so-called basing points; and that to any basing point price quoted by this respondent the amount of freight from such basing point to the place of delivery is added to arrive at the delivered price. Except as so specifically admitted, this respondent denies each and every allegation of paragraph Two of said Count II.

3. This respondent admits that in selling rigid steel conduit to purchasers at certain locations at which at the same time similar conduit is offered to them for sale by other sellers thereof, it must, and does, in order to meet the competition of such other sellers to purchasers at such locations, sell such conduit at delivered prices lower than the delivered price at which this respondent can, and does, currently sell such conduit to purchasers at other locations at which the competitive prices to be met are higher,
202 and that some of such latter locations may be nearer to this respondent's place of manufacture of such conduit than are some of such first-mentioned locations; but this respondent denies that by so selling rigid steel conduit it deprives any customer of price advantages of any kind. Except as so specifically admitted, this respondent denies each and every allegation contained in paragraph Three of said Count II in so far as they relate or refer to this respondent. This respondent denies upon information and belief each and every allegation of said paragraph Three not hereinbefore specifically answered, except that this respondent admits on information and belief that other respondents referred to in said Count II as conduit sellers

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in meeting the competition sell such conduit at different delivered prices at different places of delivery.

4. Answering paragraph Four of said Count II, this respondent repeats and reasserts each and every denial contained in the foregoing paragraphs of this answer to said Count II and denies each and every allegation of said paragraph Four. To the contrary of said allegations this respondent avers that the above-mentioned policy and practice of this respondent in meeting competitive prices serves to broaden the competitive filed in which this respondent can sell its rigid steel conduit, that said policy and practice are in all respects lawful and within the
203 rights of this respondent to meet competitive prices and in so doing to sell its products at different locations and to different customers at such different prices as may be required to that end.

Wherefore this respondent demands that the complaint of the Federal Trade Commission in this proceeding be dismissed.

The Youngstown Sheet and Tube Company,
By J. C. Argetsinger,
Vice President.

Cravath, de Gersdorff, Swaine & Wood,
Attorneys for Respondent
The Youngstown Sheet and Tube Company,
15 Broad Street,
New York, N. Y.

204 UNITED STATES OF AMERICA

BEFORE FEDERAL TRADE COMMISSION.

• • (Caption 4452) • •

ANSWER OF SPANG CHALFANT, INC.

Comes now respondent Spang Chalfant, Inc. and for answer to the complaint herein:

As to Alleged Count I.

First: Answering Paragraph One of Count I, denies upon information and belief that respondent Rigid Steel Conduit Association is an unincorporated trade association, and alleges upon information and belief that said association was dissolved as of May 31, 1940. Admits upon information and belief that Central Tube Company was at one time a member of said association. Denies that this respondent has ever been advised or assisted by or has cooperated with any member of said association in any way.

Admits that respondent H. G. Morrow was, but denies that he is, a member of the board of directors of respondent Rigid Steel Conduit Association, and alleges upon information and belief that respondent H. G. Morrow
205 resigned as a member of the board of directors of said association as of May 31, 1940. Admits that respondent H. G. Morrow was, but denies that he is, a vice president of respondent Central Tube Company, and alleges upon information and belief that he resigned as a vice president of respondent Central Tube Company as of October 1, 1940.

Denies upon information and belief that respondent Central Tube Company manufactures, sells or distributes rigid steel conduit.

Denies that this respondent has cooperated with or assisted any member of respondent Rigid Steel Conduit Association in any acts, things, practices or methods.

Admits that this respondent is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with its principal office and place of business located in the Grant Building in the City of Pittsburgh,

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Pennsylvania. Denies that this respondent manufactures rigid steel conduit and admits that it sells and distributes rigid steel conduit to and through jobbers, wholesalers and others in certain states of the United States.

Denies that respondent Republic Steel Corporation cooperates with this respondent or with respondent H. G. Morrow in promoting or furthering any acts, things, practices or methods.

206 Denies that it has knowledge as to the activities or business of respondent Charles Donley except that it subscribes to a freight rate service compiled by respondent Charles Donley.

Denies that this respondent has at any time engaged in the manufacture of rigid steel conduit or caused rigid steel conduit to be manufactured and shipped for it, except that since approximately February 20, 1940, but not prior thereto, this respondent has sold rigid steel conduit which was shipped from Ambridge, Pa. or Etna, Pa. to its customers located in certain states of the United States other than Pennsylvania. Admits that this respondent sells and distributes principally through jobbers or wholesalers who buy and sell electrical supplies, including conduit, outright and on a consignment basis, and admits upon information and belief that many of said jobbers or wholesalers resell principally to electrical contractors and to Government agencies. Admits that this respondent has been and is in competition with one or more of the other respondent "conduit sellers" in making or seeking to make sales in commerce between and among certain of the various states of the United States, of rigid steel conduit, and denies that this respondent has in any way hindered, lessened, restricted or forestalled said competition.

Denies that this respondent has acted collusively
207 or collectively, or has engaged in any monopolistic practices, or has attempted to or does dominate or manipulate any price quotations.

Denies that it has knowledge as to the allegations contained in Paragraph One of Count I, except as hereinabove specifically admitted, denied or otherwise referred to.

Second: Denies that it has knowledge as to the allegations contained in Paragraph Two of Count I, except denies that respondent Organization Service Corporation or its officers, employees or agents have at any time aided, assisted, advised, managed, directed or otherwise cooperated

with this respondent in any matter relating to the conduit business.

Third: Denies that it has knowledge as to the allegations contained in Paragraph Three of Count I, except denies that this respondent has been a party to any understanding, agreement, combination or conspiracy or act, thing, practice or method which may be alleged to have hindered, lessened, restricted or forestalled competition between sellers of rigid steel conduit.

Fourth: Admits the allegations contained in Paragraph Four of Count I, except denies that it has knowledge with respect to the tonnage of conduit sold or distributed in the United States by the respondent "conduit sellers".

208 Fifth: Denies each and every allegation contained in Paragraph Five of Count I in so far as said allegations may refer to this respondent, and denies that it has knowledge as to said allegations in so far as they may refer to the other respondents.

Sixth: Denies each and every allegation contained in Paragraphs Six and Seven of Count I in so far as said allegations may refer to this respondent, and denies that it has knowledge as to said allegations in so far as they may refer to the other respondents.

As to Alleged Count II of the Complaint.

Seventh: Answering Paragraph One of Count II, denies that this respondent has at any time sold and manufactured, or caused to be manufactured and shipped for it, rigid steel conduit, except that since approximately February 20, 1940, but not prior thereto, it has sold rigid steel conduit which from approximately February 20, 1940 was shipped from Ambridge, Pa. or Etna, Pa. to its customers located in certain states of the United States other than Pennsylvania. Admits that this respondent has been and is in competition with other sellers of conduit, but denies that this respondent has in any way hindered, restrained, lessened, suppressed, frustrated, eliminated or prevented said competition. Denies that it has knowledge as to the allegations contained in Paragraph One of Count II

209 except as hereinabove specifically admitted, denied or otherwise referred to.

Eighth: Denies each and every allegation contained in Paragraph Two of Count II in so far as said allegations may refer to this respondent, and alleges that this respond-

ent sells conduit at delivered prices which represent either a Pittsburgh or Chicago basing point price plus freight calculated at current freight rates from Pittsburgh or Chicago, as the case may be, to the point of delivery. Denies that it has knowledge as to the allegations contained in Paragraph Two of Count II in so far as said allegations may refer to other respondents.

Ninth: Denies each and every allegation contained in Paragraph Three of Count II in so far as said allegation may refer to this respondent, except admits that occasionally this respondent receives more for conduit sold to its customers located nearer the place where conduit sold by this respondent is manufactured and shipped than it receives for conduit of equal quality and quantity sold to its customers located farther from the place where conduit sold by this respondent is manufactured and shipped. Denies that it has knowledge as to the allegations to Paragraph Three of Count II in so far as said allegation may refer to other respondents.

Tenth: Denies each and every allegation contained in Paragraph Four of Count II in so far as said allega-
210 tions may refer to this respondent, and denies that it has knowledge of said allegations in so far as they may refer to other respondents.

Further answering the complaint herein respondent alleges:

1. This respondent has never manufactured and does not manufacture conduit. It first began to sell conduit on approximately February 20, 1940. It has never been a member of either the Rigid Steel Conduit Association or the National Electrical Wholesalers Association.

2. This respondent sells conduit at delivered prices which represent either a Pittsburgh or Chicago basing point price plus freight calculated at current freight rates from Pittsburgh or Chicago, as the case may be, to the point of delivery. The basing point method of quoting prices is the natural result of basic economic conditions in the steel industry, is consistent with free and open competition in the industry, and does not result in monopolistic control over prices or discriminatory treatment between customers nor does it constitute an unfair method of competition.

3. At all times this respondent has independently determined its policy and practice with respect to prices,

terms and conditions of sale, consignment contracts, so-called "protective" contracts, and all other phases
211 of its business. At no time has this respondent co-operated with or entered into any agreement or understanding with anyone with respect to any phase of the conduct of its business.

Wherefore, this respondent prays that the complaint be dismissed, and for such other and further relief as may be just and proper.

Spang Chalfant, Inc.
By A. E. Walker,
President.
Pittsburgh, Pa.

Sullivan & Cromwell,
48 Wall Street,
New York, N. Y.
Attorneys for Respondents,
Spang Chalfant, Inc.

212 UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION
• • (Caption 4452) • •

ANSWER OF RESPONDENT THE M. B. AUSTIN COMPANY.

The M. B. Austin Company an Illinois corporation, by Morton Peyser its attorney answering the complaint of the Federal Trade Commission avers that the Federal Trade Commission has no jurisdiction with respect to the acts alleged in said complaint and that said complaint fails to state acts sufficient to constitute a violation of Section 5 of the act of Congress of September 26, 1914, commonly known as the Federal Trade Commission Act and fails to state any charges within the meaning of the said act and without waiving the foregoing or any other invalidities or defects in the Commission's jurisdiction and without waiving any of the invalidities, generalities or defects in said complaint and reserving to itself the benefit of all exceptions that can or may be taken with respect
213 thereof and reserving to itself the right to move to strike out any one or more of the allegations of the

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complaint and denying that this proceeding is in the public interest, and denying that this respondent has been or is now using unfair methods of competition in commerce, makes further answer as follows:

Answer to Count I.

1. Answering paragraph One of Count I, this respondent admits that this respondent is a corporation organized and existing under the Laws of the State of Illinois with its office and principal place of business located at 108 South Desplaines Street, in the City of Chicago, State of Illinois, and that it sells and distributes to and through wholesalers, jobbers and others throughout the United States, rigid steel conduit which it causes to be manufactured for it by Triangle Conduit & Cable Co. Inc., and its predecessor Triangle Conduit & Cable Co. Inc., a New York corporation, the respondent referred to in the complaint; and that during the six years last past this respondent caused to be manufactured and shipped for it rigid steel conduit from Moundsville, West Virginia, as alleged in the complaint and has shipped such conduit to its customers some of whom have been and are lo-
214 cated in the United States other than in the state of origin of the shipments thereof; upon information and belief for the purpose only of this proceeding; respondent admits that some of the jobbers and wholesalers to whom this respondent sells rigid steel conduit are members of the National Electrical Wholesalers Association and that this respondent has been and is in competition with one or more of the other respondents referred to in the complaint as conduit sellers in making or seeking to make sales of rigid steel conduit in and among the various states of the United States and in the District of Columbia. This respondent admits that it was not at any of the various periods of time mentioned in the complaint a member of Rigid Steel Conduit Association; and denies any knowledge or information as to whether Rigid Steel Conduit Association formerly was an unincorporated Association and has an office located at No. 17 East 42nd Street, in the City of New York, State of New York; that it was formed in and prior to the year 1934 to promote the interests of its members; that those of said respondents who manufacture rigid steel conduit manufacture substantially

all the rigid steel conduit produced in the United States; that at various times prior to August, 1936, Lawrence
215 R. Quinn was and acted as the Treasurer and a member of the Board of Directors of said Association; that one George H. Sicard served as Executive Secretary of said Association for a period of approximately two years which began some time in the year 1934; that in the first two of the six years last past Frank C. Hodkinson may have attended and participated in meetings of members of said Association as a representative of American Circular Loom Company, which formerly had an office at 205 East 42nd Street in The City of New York, N. Y. and may have been a member of one or more committees of said Association from time to time.

This respondent denies any knowledge or information as to whether said Rigid Steel Conduit Association now is a trade association and that it has its offices and place of business located at No. 17 East 42nd Street, in the City of New York, State of New York, and that it has officers as alleged in the complaint. This respondent avers, upon information and belief, that said Association was dissolved and disbanded at some time prior to June, 1940, and since such times has had no office or place of business at the location mentioned in said paragraph One or elsewhere.

216 This respondent denies that it at any time engaged in, or acted, advised, assisted or cooperated with any others in furtherance of, any unlawful acts, things, practices or methods alleged in the complaint, or made use of any offices or facilities of Rigid Steel Conduit Association for any such purpose.

This respondent denies that it has used or promoted or otherwise furthered any unlawful acts, things, practices or methods alleged in the complaint and this respondent also denies that any of the other respondents named in the complaint has cooperated with or assisted, or attempted to cooperate with or assist, this respondent in using or promoting or otherwise furthering any of said unlawful acts, things, practices or methods.

This respondent denies that competition in the sale of rigid steel conduit between and among the various states of the United States or in the District of Columbia has been hindered, lessened, restricted or forestalled by any understanding, agreement, combination or conspiracy, or

by any acts, things, practices or methods done or carried on in pursuance or in furtherance of any understanding, agreement, combination or conspiracy, joined in or
217 taken part in by this respondent as alleged in the complaint or otherwise.

It denies that this respondent acts collusively or collectively or engages or has engaged in monopolistic practices in the production, pricing or selling of rigid steel conduit and that this respondent, either alone or in conjunction with any other sellers of such conduit, has been or is in a position to dominate and manipulate at any time or place the price quotations made to purchasers of such conduit.

This respondent denies any knowledge of Charles Donley, who it is alleged has an office in the Dravo Building, in the City of Pittsburgh, Pennsylvania, as an advisor on traffic matters for shippers; it denies any knowledge as to whether or not the said Charles Donley served as advisor to and traffic manager in shippers and their trade association and members thereof in connection with the preparation of distribution of compilations of freight factors or "adders" for use in calculating the price quotations and demands strict proof thereof.

Except as hereinbefore specifically admitted or otherwise answered, this respondent denies each and every allegation contained in said paragraph One of Count I in so far as they relate or refer to this respondent and, ex-
218 cept in so far as the allegations of said paragraph One are thus specifically answered, this respondent is without knowledge of the allegations thereof, including all subdivisions thereof, and demands strict proof thereof.

This respondent denies that the respondent Organization Service Corporation or its officers, employees and agents, or any of them, have at any time aided, assisted, advised, managed, directed or otherwise cooperated with this respondent in carrying out any of the acts, methods, policies, rules or practices as set forth in the complaint, whether alleged to be unlawful or otherwise, and further denies, in so far as it relates or refers to this respondent the allegation of paragraph Two of Count I of the complaint that competition among the respondents referred to in the complaint as conduit sellers has been hindered, suppressed and lessened. This respondent is without knowledge as to all the other allegations of said paragraph Two.

3. This respondent is without knowledge as to the allegations of paragraph Three of Count I, including all subdivisions thereof, except the allegation that the Commission names and includes as respondents in this proceeding the various companies named in subdivisions 1 to 13, inclusive, of said paragraph, and except that this re-
219 spondent denies that any competition referred to in said paragraph has been hindered, lessened, restricted or forestalled to any understanding, agreement, combination or conspiracy, or by any acts, things, practices or methods done or carried on in pursuance of, or in furtherance of, any understanding, agreement, combination or conspiracy joined in or taken part in or done or carried on by this respondent as alleged in said paragraph or otherwise.

4. This respondent admits for the purposes of this proceeding as substantially correct the allegations of paragraph Four of Count I, except that this respondent is without knowledge as to the allegations thereof concerning the quantity of rigid steel conduit sold and distributed annually in the United States by their respondents who are referred to in the complaint as conduit seller, other than that in some years in the last six years more than 125,000 tons thereof have been so sold and distributed by them.

5. This respondent denies each and every allegation contained in paragraph Five of Count I in so far as they relate or refer to this respondent. Except in so far as the allegations of said paragraph Five are thus specifi-
220 cally answered, this respondent is without knowledge as to the allegations thereof.

6. This respondent denies each and every allegation contained in paragraph Six of Count I, including subdivisions (1) to (19), inclusive, thereof, in so far as they relate or refer to this respondent. Except in so far as the allegations of said paragraph Six are thus specifically answered, this respondent is without knowledge as to the allegations thereof.

7. Answering paragraph Seven of Count I, this respondent repeats and reasserts each and every denial contained in the foregoing paragraphs of this answer. It denies each and every allegation contained in said paragraph Seven in so far as the allegations thereof, or any of them, relate or refer to this respondent or have ref-

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erence to any acts, things, practices, methods or agreements alleged to have been engaged in, or joined or taken part in, by this respondent. Except in so far as the allegations of said paragraph Seven are thus specifically denied, this respondent is without knowledge as to the allegations thereof.

Answer to Count II.

1. This respondent admits that it causes rigid steel conduit to be manufactured for it at Moundsville, West
221 Virginia, and that part of such conduit is shipped by it from said Moundsville, West Virginia, to its customers located in states of the United States other than said State of West Virginia; it admits that in the sale of such rigid steel conduit it is in competition with other respondents named in the complaint herein. It denies that competition in the sale thereof by this respondent has been in any respect hindered, restrained, lessened, suppressed, frustrated, eliminated or prevented by any acts, things, practices or methods alleged in the complaint, or otherwise. Except as so specifically otherwise answered, this respondent denies each and every allegation of paragraph One of Count II of the complaint in so far as they relate or refer to this respondent; and, except in so far as the allegations of said paragraph One are thus specifically answered, this respondent is without knowledge as to the allegations of said paragraph.

2. This respondent admits that it commonly sells rigid steel conduit at delivered prices; that it commonly quotes prices therefor based on its announced prices therefor at certain so-called basing points; and that to any basing
222 point price quoted by this respondent the amount of freight from such basing point to the place of delivery is added to arrive at the delivered price. Except as so specifically admitted, this respondent denies each and every allegation of paragraph Two of said Count II.

3. This respondent admits that in selling rigid steel conduit to purchasers at certain locations at which at the same time similar conduit is offered to them for sale by other sellers thereof, it must, and does, in order to meet the competition of such other sellers to purchasers at such locations, sell such conduit at delivered prices lower than the delivered price at which this respondent can, and does, currently sell such conduit to purchasers

at other locations at which the competitive prices to be met are higher, and that some of such latter locations may be nearer to this respondent's place of manufacture of such conduit than are some of such first-mentioned locations; but this respondent denies that by so selling rigid steel conduit it deprives any customer of price advantages of any kind. Except as so specifically admitted, this respondent denies each and every allegation contained in paragraph Three of said Count II in so far as they relate or refer to this respondent. This respondent denies
223 upon information and belief each and every allegation of said paragraph Three not hereinbefore specifically answered, except that this respondent admits on information and belief that other respondents referred to in said Count II as conduit sellers in meeting the competition sell such conduit at different delivered prices at different places of delivery.

4. Answering paragraph Four of said Count II, this respondent repeats and reasserts each and every denial contained in the foregoing paragraphs of this answer to said Count II and denies each and every allegation of said paragraph Four. To the contrary of said allegations this respondent avers that the above-mentioned policy and practice of this respondent in meeting competitive prices serves to broaden the competitive field in which this respondent can sell its rigid steel conduit, that said policy and practice are in all respects lawful and within the rights of this respondent to meet competitive prices, and in so doing to sell its products at different locations and to different customers at such different locations and to different customers at such different prices as may be required to that end.

Wherefore, this respondent demands that the com-
224 plaint of the Federal Trade Commission in this proceeding be dismissed.

The M. B. Austin Company,
By Morton Peyser,
Its Attorney,
Office & P. O. Address,
#8 West 40th Street,
Borough of Manhattan,
City of New York.

225 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

* * (Caption—4452.) * *

Answer of Respondents, George L. Hatheway, Regina G. Hatheway, Katherine R. Hatheway and Jane Hatheway, partners trading as Clifton Conduit Company, hereinafter referred to as Respondents Hatheway, to the complaint herein.

1. Respondents Hatheway deny the allegations, and each of them, contained in paragraph One of Count I of the complaint herein, insofar as said allegations refer or relate to these respondents, and deny any knowledge or information sufficient to form a belief of all other allegations contained in said paragraph One of Count I, except

226 That these respondents are partners, operating and trading under the name and style of Clifton Conduit Co., with their offices and principal place of business located at 75 Montgomery Street, Jersey City, New Jersey.

That they sell and distribute to wholesalers, jobbers and others in states of the United States, Rigid Steel Conduit manufactured for them by respondent, General Electric Company.

That for the period of four years last past, they have caused Rigid Steel Conduit to be shipped for them from New Kensington, Pa. to their customers located in states of the United States other than the state of origin of such shipments.

That they sell and distribute principally through jobbers and wholesalers who buy and sell electrical supplies, including conduit, outright and on a consignment basis.

That they are in competition with one or more of the other respondent "conduit sellers" in making or seeking to make sales of Rigid Steel Conduit in commerce between and among various states of the United States.

2. Respondents Hatheway deny the allegations, and each of them, contained in paragraphs Two, Five and Six of Count I of the complaint herein, insofar as said allega-

tions refer or relate to these respondents, and deny any knowledge or information sufficient to form a belief of all other allegations contained in said paragraphs Two, Five and Six of said Count I.

3. Respondents Hatheway deny any knowledge or information sufficient to form a belief of the allegations,
227 and each of them, contained in paragraph Three of Count I of the complaint herein.

4. Respondents Hatheway deny the allegations, and each of them, contained in paragraph Seven of Count I of the complaint herein, insofar as said allegations refer or relate to these respondents, and deny any knowledge or information sufficient to form a belief of all other allegations contained in said paragraph Seven of said Count I.

5. Respondents Hatheway deny the allegations, and each of them, contained in paragraph One of Count II of the complaint herein, insofar as said allegations refer or relate to these respondents, and deny any knowledge or information sufficient to form a belief as to all other allegations contained in said paragraph One of said Count II, except that these respondents sell Rigid Steel Conduit to their customers in several of the states of the United States other than the state of origin and that they are in competition with other "conduit sellers" mentioned in said paragraph One of Count II.

6. Respondents Hatheway deny the allegations, and each of them, contained in paragraphs Two, Three and
228 Four of Count II of the complaint herein, insofar as said allegations refer or relate to these respondents, and deny any knowledge or information sufficient to form a belief as to all other allegations contained in said paragraphs Two, Three and Four of said Count II, except that these respondents generally sell Rigid Steel Conduit at delivered prices; that they generally quote prices therefor based on their announced prices therefor at certain so-called basing points; and that to any basing point price quoted by these respondents the amount of freight from such basing point to the place of delivery is added to arrive at the delivered price.

Wherefore these respondents demand that the complaint of the Federal Trade Commission in this proceeding be dismissed.

George L. Hatheway, Regina G. Hatheway, Katherine R. Hatheway and Jane Hatheway, partners trading as Clifton Conduit Company,
By George L. Hatheway,
Partner.

Monroe, Byrne & Kaye,
Attorneys for Respondents Hatheway,
50 Broadway,
New York City, N. Y.

229 UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION

* * (Caption 4452) * *

ANSWER OF J. M. BARTON TO COMPLAINT.

J. M. Barton, one of the respondents above named, reserving all objection to the jurisdiction of the Federal Trade Commission herein and the sufficiency of the Complaint, and denying any unfair methods of competition on his part or that these proceedings are in the public interest, for his answer to the Complaint herein, respectfully shows:

Answer to Count I.

I. Answering paragraph One of Count I of the Complaint this respondent admits that he is President of Fretz-Moon Tube Company, Inc. of East Butler, Pennsylvania, and not Butler, Pennsylvania, as alleged in the Complaint; admits that he was a director of respondent Rigid Steel Conduit Association for the period from November 12, 1936 to October 5, 1939, but denies that he has been a director of such Association at any time since October 5, 1939; admits that the Rigid Steel Conduit Association was, but denies that it is now, an unincorporated trade
230 association with its office and principal place of business located in New York City; denies that he is a

member of said Association; denies that he used the facilities of said Association until about June 1, 1940; avers that he was a member of the Rigid Steel Conduit Association from on or about November 12, 1936 to October 5, 1939, on which latter date he resigned as a member of the Association; denies that he ever made use of the offices and other facilities of said Association for actively advising, assisting and cooperating with the members of that Association and others in the industry in furtherance of the alleged unlawful acts, things, practices and methods set forth in said Complaint or any other unlawful acts, practices or methods.

Except as above admitted, he denies each and every allegation contained in Paragraph One of Count I of the Complaint which pertains to him and states that he is without knowledge as to such allegations as relate to any other respondent except Fretz-Moon Tube Company, Inc., of which he is President; and as to each and every allegation contained in said paragraph pertaining to respondent Fretz-Moon Tube Company, Inc., insofar as he may be required to answer the same, this respondent adopts as his answer thereto the answer of respondent Fretz-Moon Tube Company, Inc., filed in this proceeding.

II. Answering paragraph Two of Count I of the Complaint this respondent denies each and every allegation contained therein which pertains to him and states that he is without knowledge as to such allegations as relate to any other respondent except Fretz-Moon Tube Company, Inc., of which he is President; and as to each and every allegation contained in said paragraph pertaining to respondent Fretz-Moon Tube Company, Inc., insofar as he may be required to answer the same, this respondent adopts as his answer thereto the answer of respondent Fretz-Moon Tube Company, Inc. filed in this proceeding.

231 III. Answering paragraph Three of Count I of the Complaint this respondent alleges that he is without knowledge as to the allegations contained therein excepting that he denies that the competition referred to therein has been hindered, lessened, restricted and forestalled by any understanding, agreement, combination, conspiracy or any act, thing, practice or method done or carried on in pursuance or in furtherance thereof, joined in, done or carried on by this respondent. As to each and every allegation contained in said paragraph pertaining to respondent Fretz-Moon Tube Company, Inc., of which he is President,

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insofar as he may be required to answer the same, this respondent adopts as his answer thereto the answer of Fretz-Moon Tube Company, Inc., filed in this proceeding.

IV. Answering paragraph Four of Count I of the Complaint this respondent admits as substantially correct for the purpose of this proceeding the allegations contained in said paragraph except that he is without knowledge as to the allegation thereof relating to the quantity of rigid steel conduit sold and distributed annually in the United States by the respondents referred to in the Complaint as "Conduit Sellers".

V. Answering paragraphs Five and Six of Count I of the Complaint this respondent denies each and every allegation contained in each of said paragraphs insofar as they relate to this respondent and states that he is without knowledge as to such allegations as relate to any other respondent except Fretz-Moon Tube Company, Inc., of which he is President; and as to each and every allegation contained in each of said paragraphs pertaining to respondent Fretz-Moon Tube Company, Inc., insofar as he may be required to answer the same, this respondent adopts as his answer thereto the answer of Fretz-Moon Tube Company, Inc. filed in this proceeding.

VI. Answering paragraph Seven of Count I of the
232 Complaint this respondent renews all of the admissions, averments and denials made by him in the foregoing paragraphs of this answer and denies each and every allegation contained in said paragraph Seven of Count I of the Complaint which pertains to him and states that he is without knowledge as to such allegations as relate to any other respondent except Fretz-Moon Tube Company, Inc., of which he is President; and as to each and every allegation contained in said paragraph pertaining to respondent Fretz-Moon Tube Company, Inc. insofar as he may be required to answer the same, this respondent adopts as his answer thereto the answer of Fretz-Moon Tube Company, Inc. filed in this proceeding.

Answer to Count II.

I. This respondent is not named in paragraph One of Count II of the Complaint and is advised by counsel that he is not called upon either to admit or deny the facts as alleged therein. As to each and every allegation contained in said paragraph pertaining to respondent Fretz-

Moon Tube Company, Inc., of which he is President, insofar as he may be required to answer the same, this respondent adopts as his answer thereto the answer of Fretz-Moon Tube Company, Inc., filed in this proceeding.

II. This respondent is not named in paragraph Two of Count II of the Complaint and is advised by counsel that he is not called upon either to admit or deny the facts as alleged therein. As to each and every allegation contained in said paragraph pertaining to respondent Fretz-Moon Tube Company, Inc., of which he is President, insofar as he may be required to answer the same, this respondent adopts as his answer thereto the answer of Fretz-Moon Tube Company, Inc., filed in this proceeding.

III. This respondent is not named in paragraph
233 Three of Count II of the Complaint and is advised by counsel that he is not called upon either to admit or deny the facts as alleged therein. As to each and every allegation contained in said paragraph pertaining to respondent Fretz-Moon Tube Company, Inc., of which he is President, insofar as he may be required to answer the same, this respondent adopts as his answer thereto the answer of Fretz-Moon Tube Company, Inc., filed in this proceeding.

IV. This respondent is not named in paragraph Four of Count II of the Complaint and is advised by counsel that he is not called upon either to admit or deny the facts as alleged therein. As to each and every allegation contained in said paragraph pertaining to respondent Fretz-Moon Tube Company, Inc., of which he is President, insofar as he may be required to answer the same, this respondent adopts as his answer thereto the answer of Fretz-Moon Tube Company, Inc., filed in this proceeding.

Except as hereinabove set forth, this respondent denies each and every allegation of the Complaint herein.

Wherefore, this respondent prays that the Complaint be dismissed and for such other and further relief as may be just and proper.

J. M. Barton,
By Thomas F. Patton,
His Attorney.

Thomas F. Patton and A. J. Gentholts
Attorneys for J. M. Barton
Office and Post Office Address
1530 Republic Building
Cleveland, Ohio

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234 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION

* * (Caption 4452) * *

ANSWER TO FRETZ-MOON TUBE COMPANY, INC. TO COMPLAINT.

Fretz-Moon Tube Company, Inc., one of the respondents above named, reserving all objections to the jurisdiction of the Federal Trade Commission herein and the sufficiency of the Complaint, and denying any unfair methods of competition on its part or that these proceedings are in the public interest, for its answer to the Complaint herein, respectfully shows:

Answer to Count I.

I. Answering paragraph One of Count I of the Complaint this respondent admits that it is a corporation organized under the laws of the State of Pennsylvania, but avers that its principal office and place of business is located in the City of East Butler, Pennsylvania, and not at Butler, Pennsylvania, as alleged in the Complaint; denies that it is 50% owned by respondent Republic Steel Corporation, but avers that 50% of the outstanding common stock of the respondent is owned by Republic Steel Corporation; admits that it is engaged in the manufacture and sale of rigid steel conduit, but denies that it causes said rigid steel conduit to be sold and distributed by Steel and Tubes, Inc., of Cleveland, Ohio, and denies that
235 said Steel and Tubes, Inc. is its Sales Agent.

This respondent admits that the Rigid Steel Conduit Association was, but denies that it is now, an unincorporated trade association with its office and principal place of business located in New York City; denies that it is a member of said Association; denies that it used the facilities of said Association until about June 1, 1940; avers that it was a member of the Rigid Steel Conduit Association from on or about November 12, 1936 to October 5, 1939, on which latter date it resigned as a member of the Association, continuing the payment of fees to May 17, 1940 solely for the purpose of obtaining statistical and technical data;

denies that it ever made use of the offices and other facilities of said Association for actively advising, assisting or cooperating with the members of that Association and others in the industry in furtherance of any unlawful acts, things, practices and methods, whether set forth in said Complaint or otherwise; admits that Mr. J. M. Barton is President of Fretz-Moon Tube Company, Inc., but denies that said J. M. Barton is a member of the board of directors of respondent Rigid Steel Conduit Association; avers that said J. M. Barton was a director of said Rigid Steel Conduit Association from November 12, 1936 to October 5, 1939; denies that respondent Charles Donley acted as adviser or traffic manager for this respondent.

This respondent admits that rigid steel conduit manufactured by it is sold to customers in certain of the states of the United States other than Pennsylvania, such distribution and sale being carried out by means of wholesaler or jobbers who buy and sell electrical supplies, including rigid steel conduit, on a consignment basis, some of whom resell said rigid steel conduit to electrical contractors and to government agencies; admits that it is in competi-
236 tion with other "Conduit Sellers" in making or seeking to make sales in commerce between and among the various states, but denies that it has acted collusively and collectively or that it has in any manner engaged in monopolistic practices in the production, price, or sale of rigid steel conduit, or that it is in a position, either independently or in conjunction with other conduit sellers or conduit wholesalers, to dominate and manipulate the price quotations which are made to unorganized purchasers of rigid steel conduit.

Except as above admitted, this respondent denies each and every allegation contained in paragraph One of Count I of the Complaint which pertains to it and states that it is without knowledge as to such allegations as relate to others.

II. Answering paragraph Two of Count I of the Complaint this respondent denies each and every allegation contained in said paragraph which pertains to it and states that it is without knowledge as to such allegations as relate to others.

III. Answering paragraph Three of Count I of the Complaint this respondent alleges that it is without knowledge as to the allegations contained therein except that it

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denies that the competition referred to therein has been hindered, lessened, restricted and forestalled by any understanding, agreement, combination, conspiracy or any act, thing, practice or method done or carried on in pursuance or in furtherance thereof, joined in, done or carried on by this respondent.

IV. Answering paragraph Four of Count I of the Complaint this respondent admits as substantially correct for the purpose of this proceeding the allegations contained in said paragraph except that it is without knowledge as to the allegation thereof relating to the quantity of rigid 237 steel conduit sold and distributed annually in the United States by the respondents referred to in the Complaint as "Conduit Sellers".

V. Answering paragraphs Five and Six of Count I of the Complaint this respondent denies each and every allegation contained in each of said paragraphs insofar as they relate to this respondent and states that it is without knowledge as to such allegations as relate to others.

VI. Answering paragraph Seven of Count I of the Complaint this respondent renews all of the admissions, averments and denials made by it in the foregoing paragraphs of this answer and denies each and every allegation contained in said paragraph Seven of Count I of the Complaint which pertain to it and states that it is without knowledge as to such allegations as relate to others.

Answer to Count II.

I. Answering paragraph One of Count II of the Complaint this respondent admits that it manufactures rigid steel conduit near but not at Butler, Pennsylvania, namely, at East Butler, Pennsylvania, and that part of such conduit is shipped by it from said East Butler, Pennsylvania, to its customers located in states of the United States other than the State of Pennsylvania; admits that such sales are in competition with other conduit sellers; denies that it has in any way hindered competition or in any manner restrained, lessened, suppressed, frustrated, eliminated or prevented competition by the acts, things, practices and methods as set forth in said Complaint, or otherwise.

Except as above admitted, it denies each and every allegation contained in paragraph One of Count II of the Complaint which pertains to it and states that it is without knowledge as to such allegations as relate to others.

238 II. Answering paragraph Two of Count II of the Complaint this respondent admits that it sells rigid steel conduit on a delivered price basis; admits that such delivered prices are computed by the use of so-called published price cards or sheets issued from time to time by this respondent, plus freight adders or factors published in supplemental price cards issued from time to time by this respondent, establishing delivered prices on rigid steel conduit from one or more specified basing points.

Except as above admitted, this respondent denies each and every allegation contained in paragraph Two of Count II of the Complaint which pertains to it and states that it is without knowledge as to such allegations as relate to others.

III. Answering paragraph Three of Count II of the Complaint this respondent denies each and every allegation contained in said paragraph which pertains to it and states that it is without knowledge as to such allegations as relate to others.

IV. Answering paragraph Four of Count II of the Complaint this respondent renews all of the admissions, averments and denials made by this respondent in answer to paragraphs One, Two and Three of Count II of the Complaint, and denies each and every allegation contained in paragraph Four which pertains to it and states that it is without knowledge as to such allegations as relate to others.

Except as hereinabove set forth, this respondent
239 denies each and every allegation of the Complaint herein.

Wherefore, this respondent prays that the Complaint be dismissed and for such other and further relief as may be just and proper.

Fretz-Moon Tube Company, Inc.
By Thomas F. Patton,
Its Attorney.

Thomas F. Patton and A. J. Gentholts
Attorneys for Fretz-Moon Tube Company, Inc.
Office and Post Office Address
1530 Republic Building
Cleveland, Ohio.

240 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION

* * (Caption 4452) * *

ANSWER OF REPUBLIC STEEL CORPORATION TO COMPLAINT.

Republic Steel Corporation, one of the respondents above named, reserving all objections to the jurisdiction of the Federal Trade Commission herein and the sufficiency of the Complaint, and denying any unfair methods of competition on its part or that these proceedings are in the public interest, for its answer to the Complaint herein, respectfully shows:

Answer to Count I.

I. Answering paragraph One of Count I of the Complaint this respondent admits that it is a corporation organized under the laws of the State of New Jersey, but avers that its principal office and place of business is located at Cleveland, Ohio, and not at Youngstown, Ohio, as alleged in the Complaint; denies that respondent Fretz-Moon Tube Company, Inc., is 50% owned by this respondent, but avers that it owns 50% of the common stock of Fretz-Moon Tube Company, Inc.; denies that it owns all of the outstanding capital stock in respondent Steel and Tubes, Inc.; avers that Steel and Tubes, Inc. was duly and legally dissolved and liquidated on October 13, 1939 and that all of its properties, assets and business were transferred to this respondent as the sole stockholder of

241 Steel and Tubes, Inc.; denies that it controls, assists and cooperates in the alleged activities of said respondent Steel and Tubes, Inc.; denies any cooperation with respondents Fretz-Moon Tube Company, Inc. and Steel and Tubes, Inc., in promoting and furthering any unlawful acts, things, practices and methods whether set forth in said Complaint, or otherwise.

Except as above admitted, it denies each and every allegation contained in paragraph One of Count I of the Complaint which pertains to it and states that it is without knowledge as to such allegations as relate to others.

II. Answering paragraph Two of Count I of the Complaint this respondent denies each and every allegation contained in said paragraph which pertains to it and states

that it is without knowledge as to such allegations as relate to others.

III. Answering paragraph Three of Count I of the Complaint this respondent alleges that it is without knowledge as to the allegations contained therein except that it denies that the competition referred to therein has been hindered, lessened, restricted and forestalled by any understanding, agreement, combination, conspiracy or any act, thing, practice or method done or carried on in pursuance or in furtherance thereof, joined in, done or carried on by this respondent.

IV. Answering paragraph Four of Count I of the Complaint this respondent admits as substantially correct for the purpose of this proceeding the allegations contained in said paragraph except that it is without knowledge as to the allegation thereof relating to the quantity of rigid steel conduit sold and distributed annually in the United States by the respondents referred to in the Complaint as "Conduit Sellers".

242 V. Answering paragraphs Five and Six of Count I of the Complaint this respondent denies each and every allegation contained in each of said paragraphs insofar as they relate to this respondent and states that it is without knowledge as to such allegations as relate to others.

VI. Answering paragraph Seven of Count I of the Complaint this respondent renews all of the admissions, averments and denials made by it in the foregoing paragraphs of this answer and denies each and every allegation contained in said paragraph Seven of Count I of the Complaint which pertain to it and states that it is without knowledge as to such allegations as relate to others.

Answer to Count II.

I. Answering paragraph One of Count II of the Complaint this respondent admits that it sells rigid steel conduit and causes a part thereof to be shipped to its customers located in the several states of the United States other than the state of origin of such shipments and that such sales are in competition with other conduit sellers; denies that it has in any way hindered competition or in any manner restrained, lessened, suppressed, frustrated, eliminated or prevented competition by the acts, things, practices and methods as set forth in said Complaint, or otherwise.

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Except as above admitted, it denies each and every allegation contained in paragraph One of Count II of the Complaint which pertains to it and states that it is without knowledge as to such allegations as relate to others.

II. Answering paragraph Two of Count II of the Complaint this respondent admits that it sells rigid steel conduit on a delivered price basis; admits that such delivered prices are computed by the use of so-called published price cards or sheets issued from time to time by this re-
243 spondent, plus freight adders or factors published in supplemental price cards issued from time to time by this respondent, establishing delivered prices on rigid steel conduit from one or more specified basing points.

Except as above admitted, this respondent denies each and every allegation contained in paragraph Two of Count II of the Complaint which pertains to it and states that it is without knowledge as to such allegations as relate to others.

III. Answering paragraph Three of Count II of the Complaint this respondent denies each and every allegation contained in said paragraph which pertains to it and states that it is without knowledge as to such allegations as relate to others.

IV. Answering paragraph Four of Count II of the Complaint this respondent renews all of the admissions, averments and denials made by this respondent in answer to paragraphs One, Two and Three of Count II of the Complaint, and denies each and every allegation contained in paragraph Four which pertains to it and states that it is without knowledge as to such allegations as relate to others.

Except as hereinabove set forth, this respondent denies each and every allegation of the Complaint herein.

Wherefore, this respondent prays that the Complaint be dismissed and for such other and further relief as may be just and proper.

Republic Steel Corporation,
By Thomas F. Patton,
Its Attorney.

Thomas F. Patton and A. J. Gentholts,
Attorneys for Republic Steel Corporation,
Office and Post Office Address,
1530 Republic Building,
Cleveland, Ohio.

247 UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

At a regular session of the Federal Trade Commission, held at its office in the City of Washington, D. C., on the 25th day of July, A. D., 1941.

Commissioners:

Charles H. March, Chairman.
Garland S. Ferguson.
Ewin L. Davis.
William A. Ayres.
Robert E. Freer.

* * (Caption—4452.) * *

ORDER APPOINTING TRIAL EXAMINER AND FIXING TIME AND PLACE FOR TAKING TESTIMONY.

This matter being at issue and ready for the taking of testimony, and pursuant to authority vested in the Federal Trade Commission, under an Act of Congress (38 Stat. 717; 15 USCA, Section 41),

It Is Ordered that John W. Norwood, a trial examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law;

It Is Further Ordered that the taking of testimony in this proceeding begin on Monday, September 15, 1941, at ten o'clock in the forenoon of that day (eastern standard time) in Room 332, Federal Trade Commission Building, Sixth Street and Constitution Avenue, N. W., Washington, D. C.

Upon completion of testimony for the Federal Trade Commission, the trial examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondent. The trial examiner will then close the case and make his report upon the evidence.

Otis B. Johnson,
Secretary.

(Seal)

1 BEFORE THE FEDERAL TRADE COMMISSION.

In the Matter of:
Rigid Steel Conduit Association, *et al.* } Docket No. 4452.

Room 332, Federal Trade Commission Building,
Washington, D. C.,
September 15, 1941.

Met, pursuant to adjournment, at 10 a. m.

Before:

John W. Norwood, Trial Examiner.

Appearances:

Everett MacIntyre, Esq., and Clarence H. Calhoun, Jr., Esq., appearing for the Federal Trade Commission.

Breed, Abbott & Morgan, 15 Broad Street, New York City, by Robert W. Austin, of counsel, appearing for National Electric Wholesalers Association and members including J. G. Johannesen, Chairman; D. L. Fife, Vice-Chairman; Alfred Byers, Secretary; the following committee members: D. L. Fife, W. S. Blue, W. J. Drury, A. H. Kahn, C. H. McCullough, H. E. Rasmussen, H. O. Smith, L. E. Latham, F. R. Eiseman, W. R. Kiefer, H. B. Tompkins, A. L. Halistrom, A. S. Riechman, and D. M. Smith.

Also: E. B. Latham & Company, Fife Electric Supply Company, Columbian Electrical Company,
2 W. T. McCullough Electric Company, Peerless Electric Supply Company, The Hardware and Supply Company, Revere Electric Company, Kiefer Electric Supply Company, F. D. Lawrence Electric Company, and The C. S. Mersick & Company.

Campbell, Wick, Houck & Thomas, 1100 Peoples Bank Building, Pittsburgh, Pa., appearing for Garland Manufacturing Company.

Cravath, deGersdorff, Swaine & Wood, 15 Broad Street, New York City, by H. A. Moore, Esq., R. L. Gilpatric, Esq., W. W. Robison, Esq., and P. S. Cleaveland, Esq., appearing for Youngstown Sheet & Tube Company.

James M. Houston, Esq., 2137 Oliver Building, Pittsburgh, Pa., appearing for J. A. Bennett, National Electric Products Corporation, Charles Donley, Frank C. Hodkinson.

Illch & Poskanzer, 78 State Street, Albany, N. Y., by Robert C. Poskanzer, Esq., appearing for Cohoes Rolling Mill Company.

Lewis, Rice, Tucker, Allen & Chubb, by Milton H. Tucker, Esq., 208 North Broadway, St. Louis, Mo., appearing for Laclede Steel Company and Laclede Tube Company.

Montgomery & MacCracken, by Robert C. Walker, Esq., of counsel, 1500 Morris Building, Philadelphia, Pa., appearing for Walker Brothers and H. S. Walker.

Monroe, Byrne & Kaye, 50 Broadway, New York City, appearing for Clifton Conduit Company (partnership composed of George L., Regina G., Katherine R., and Jane Hatheway).

Morton Peyser, Esq., 8 West Fortieth Street, New York City, appearing for Triangle Conduit & Cable Company, Inc., and M. B. Austin Co.

3 Thomas F. Patton, Esq., and A. J. Gentholts, Esq., 1530 Republic Building, Cleveland, Ohio, appearing for J. M. Barton, Fretz-Moon Tube Company, Republic Steel Corporation, Steel & Tubes, Inc.

Pope & Ballard, 120 South LaSalle Street, Chicago, Ill., by P. C. King, Jr., Esq., 707 Munsey Building, Washington, D. C., appearing for Clayton Mark & Company.

Harold Smith, Esq., and Job Taylor, 2nd., Esq., of counsel, 40 Wall Street, New York City, appearing for Westinghouse Electric Supply Company.

Stewart & Lewis, by W. Deming Stewart, Esq., Park Building, Pittsburgh, Pa., appearing for Lawrence R. Quinn, Enameled Metals Company, Steelduct Company.

Frank W. Stoneciffer, Esq., 2021 Farmers Bank Building, Pittsburgh, Pa., appearing for A. G. Holmes, trustee in bankruptcy, for Garland Manufacturing Company.

Sullivan & Cromwell, by Edward H. Green, Esq., and Glenn McDaniel, Esq., of counsel, 48 Wall Street, New York City, appearing for H. G. Morrow and Spang Chalfant, Inc.

Gerard Swope, Jr., Esq., 1285 Boston Avenue, Bridgeport, Conn. (Wright, Gordon, Zachry & Parlin, 63 Wall Street, New York City), by Robert M. Bozeman, Esq., of counsel, appearing for A. E. Newman, General Electric Company, General Electric Supply Corporation.

Tibbetts, Lewis, Lazo & Welch, by Murray D. Welch, Esq., 15 Broad Street, New York City, appearing for Oranization Service Corporation and officers named thereunder; Herbert S. Blake, Herbert S. Blake, Jr., N. Myles Brown, Thomas B. Jordan, Paul Weiss, C. C. Gregory; Robert S. Booth, Executive Secretary of R. S. C. A.

4 Thomas J. Ward, Esq., 420 Lexington Avenue, New York City, appearing for Graybar Electric Company, Inc.

5 PROCEEDINGS.

Trial Examiner Norwood: Pursuant to the order of the Federal Trade Commission dated the 25th day of July, 1941 the hearing in this case, being Docket No. 4452, in the matter of the Rigid Steel Conduit Association, and others, is hereby convened at 10 o'clock a. m., Eastern Standard Time, September 15, 1941, in Room 332, Federal Trade Commission Building, Sixth Street and Constitution Avenue, Northwest, Washington, D. C.

Mr. Everette MacIntyre and Mr. Clarence H. Calhoun represent the complainant, the Federal Trade Commission, and the following counsel represent the Respondents named:

Breed, Abbott & Morgan, 15 Broad Street, New York City, by Robert W. Austin, of counsel, appearing for National Electric Wholesalers Association and members including J. G. Johannesen, Chairman; D. L. Fife, Vice-

Chairman; Alfred Byers, Secretary; the following committee members: D. L. Fife, W. S. Blue, W. J. Drury, A. H. Kahn, C. H. McCullough, H. E. Rasmussen, H. C. Smith, L. E. Latham, F. R. Eiseman, W. R. Kiefer, H. B. Tompkins, A. L. Halistrom, A. S. Riechman, and D. M. Smith. Also: E. B. Latham & Company, Fife Electric Supply Company, Columbian Electrical Company, W. T. McCullough Electric Company, Peerless Electric Supply Company, The Hardware and Supply Company, Revere Electric Company, Kiefer Electrical Supply Company, F. D.
6 Lawrence Electric Company, and The C. S. Mersick & Company.

Campbell, Wick, Houck & Thomas, 1100 Peoples Bank Building, Pittsburgh, Pa., appearing for Garland Manufacturing Company.

Cravath, deGersdorff, Swaine & Wood, 15 Broad Street, New York City, by H. A. Moore, Esq., R. L. Gilpatric, Esq., W. W. Robinson, Esq., and P. S. Cleaveland, Esq., appearing for Youngstown Sheet & Tube Company.

James M. Houston, Esq., 2137 Oliver Building, Pittsburgh, Pa., appearing for J. A. Bennett, National Electric Products Corporation, Charles Donley, Frank C. Hodkinson.

Illch & Poskanzer, 78 State Street, Albany, N. Y., by Robert C. Poskanzer, Esq., appearing for Cohoes Rolling Mill Company.

Lewis, Rice, Tucker, Allen & Chubb, by Milton H. Tucker, Esq., 208 North Broadway, St. Louis, Mo., appearing for Laclede Steel Company and Laclede Tube Company.

Montgomery & McCracken, by Robert C. Walker, Esq., of counsel, 1500 Morris Building, Philadelphia, Pa., appearing for Walker Brothers and H. S. Walker.

Monroe, Byrne & Kaye, 50 Broadway, New York City, appearing for Clifton Conduit Company (partnership composed of George L., Regina G., Katherine R., and Jane Hatheway).

Morton Peyser, Esq., 8 West Fortieth Street, New
7 York City, appearing for Triangle Conduit & Cable Company, Inc., and M. B. Austin Company.

Thomas F. Patton, Esq., and A. J. Gentholts, Esq., 1530 Republic Building, Cleveland, Ohio, appearing for J. M. Barton, Retz-Moon Tube Company, Republic Steel Corporation, Steel & Tubes, Inc.

Pope & Ballard, 120 South LaSalle Street, Chicago, Ill.,

BLEED THROUGH – POOR COPY

by P. C. King, Jr., Esq., 707 Munsey Building, Washington, D. C., appearing for Clayton Mark & Company.

Harold Smith, Esq., and Job Taylor 2nd, Esq., of Counsel, 40 Wall Street, New York City, appearing for Westinghouse Electric Supply Company.

Stewart & Lewis, by W. Deming Stewart, Esq., Park Building, Pittsburgh, Pa., appearing for Lawrence R. Quinn, Enameled Metals Company, Steelduct Company.

Frank W. Stoneciffer, Esq., 2021 Farmers Bank Building, Pittsburgh, Pa., appearing for A. G. Holmes, trustee in bankruptcy, for Garland Manufacturing Company.

Sullivan & Cromwell, by Edward H. Green, Esq., and Glenn McDaniel, Esq., of Counsel, 48 Wall Street, New York City, appearing for H. G. Morrow and Spang Chalfant, Inc.

Gerard Swope, Jr., Esq., 1285 Boston Avenue, Bridgeport, Conn. (Wright, Gordon, Zachry & Parlin, 63 Wall Street, New York City), by Robert M. Bozeman, Esq., of Counsel, appearing for A. E. Newman, General Electric Company, General Electric Supply Corporation.

Tibbetts, Lewis, Lazo & Welch, by Murray D. Welch, Esq., 15 Broad Street, New York City, appearing for Organization Service Corporation and officers named thereunder; Herbert S. Blake, Herbert S. Blake, Jr., N. Myles Brown, Thomas B. Jordan, Paul Weiss, C. C. Gregory; Robert S. Booth, Executive Secretary of R. S. C. A.

Thomas J. Ward, Esq., 420 Lexington Avenue, New York City, appearing for Graybar Electric Company, Inc.

Now, gentlemen, if any of the names or addresses I have read are wrong, counsel may call attention to it for the record when I finish my statement.

We will receive evidence at these hearings on the issues raised by the pleadings. A tentative study was furnished most of counsel, I think, and of course they will raise questions which will be presented to us to consider from time to time.

Now, we will conduct these hearings with practically the same formality as is followed in the United States district courts as far as we can. Counsel are familiar with the rules of practice.

I will state that counsel who wish copies of the record will arrange with the Official Reporter, who is not a Government employee.

I also invite your attention to the rules of practice,
9 which forbid smoking in the hearing rooms, and let us have that rule observed in all respects.

Now, our practice is for counsel making motions, or any argument which is permissible, which must be very brief, should stand. It prevents confusion, and it is by far the better method. The counsel who is examining the witness may sit while he asks his questions. If he wishes to make a point he should rise and make it.

Mr. Robison: Mr. Examiner, in connection with the list of appearances that you read, I think it should be noted on the record concerning Steel & Tubes, Inc., whom you mentioned, that the company has been dissolved, and a motion was made in the past before the Commission to dismiss as to that company.

Mr. Robison: And I wish to say, incidentally, that in the absence of their immediate counsel, whose names have gone on the record, Mr. Moore and Mr. Gilpatric and myself will pinch hit for them perhaps for a day or two.

Trial Examiner Norwood: I will also say that I omitted to read the name of assisting counsel to Mr. Gerard Swope, Jr., who represents A. E. Newman, General Electric Company and General Electric Supply Corporation, the name of Wright, Gordon, Zachry & Parlin, 63 Wall Street, New York, N. Y. Robert M. Bozeman should be added as assisting Mr. Swope for those respondents.

10 Mr. Peyser: Mr. Examiner, I would like to make note on the record, the respondent for whom I appear, the Triangle Conduit & Cable Company, Inc., is a Delaware corporation, although the complaint was served upon the said corporation in the State of New York, as a New York corporation of the same name, the New York corporation having merged into the Delaware corporation on the 29th of June, 1940, and was thereafter dissolved.

Mr. Austin: Mr. Examiner, I would like to note on the record that Robert W. Austin is appearing for Breed, Abbott & Morgan for the Electric Wholesalers instead of Dana T. Ackerly.

Mr. Stewart: Mr. Examiner, for Stewart & Lewis. Unless I misunderstood you, I think you read my appearance as being for the Rigid Steel Conduit Association. The complaint shows that that was dissolved prior to the date of the filing of the complaint. There was no appearance entered for it. I am sure I did not enter an appearance.

Trial Examiner Norwood: Didn't you enter a special appearance, moving to dismiss, or something like that?

Mr. Stewart: I do not recall.

11 Let the record show that Stewart & Lewis are not appearing for Rigid Steel Conduit Association. Is that right?

Mr. MacIntyre: If Your Honor please, I think the record should also show that while Steel & Tubes, Inc., has made a motion for dismissal of the complaint as to it because of an alleged dissolution, that it nevertheless remains a party respondent here.

I also want to note that while you noted for the record that Mr. Stoneciffer is representing Mr. Holmes, and Mr. Pattan, that they are doing so in connection with special motions, that those two parties are not named as parties respondent in the case.

Mr. Stewart: Just to keep the record straight, as I understand it, Mr. MacIntyre, your position is that the Garland Manufacturing Company, while it is in bankruptcy, is still subject to any order in this proceeding. Of course, the trustees are not, without special order of the bankruptcy court. Is that your idea?

Mr. MacIntyre: The only thing I believe I need reply to, is that Garland Manufacturing Company remains

12 as a respondent.

Trial Examiner Norwood: Well, that raises a technical question which I shall leave to the Commission unless it involves taking considerable unnecessary evidence, but for the time being we will receive the evidence as if they were respondents until I can study through the matter.

Mr. Stewart: There is nobody here representing them.

Mr. Moore: Mr. Examiner, my name is Moore.

I take it the statement made by counsel for the Commission does not mean that anyone concedes that Steel & Tubes remains as a party to the record; that is merely a contention, as I understand it, of counsel for the Commission.

Mr. MacIntyre: I so contended without concession.

Mr. Moore: Well, your statement was that it did remain a party of record. That is the only reason for my making any statement.

Trial Examiner Norwood: Is there anything further?

Mr. McDaniel: If Your Honor please, in connection with the appearance of Sullivan & Cromwell, will you

please note the name of Edward H. Green and Glenn McDaniel, of counsel.

13 Mr. Walker: Mr. Examiner, in connection with the representation of Montgomery & McCracken, please note Robert C. Walker, Montgomery & McCracken, representing Walker Brothers; Robert C. Walker of counsel.

Mr. Taylor: If Your Honor please, in connection with the appearance of Harold Smith, I wish you would note a change of address on that to 40 Wall Street instead of 150 Broadway, and note the appearance of Job Taylor, 2nd, of counsel.

Mr. Welch: If Your Honor please, in connection with the Organization Service Corporation and group of officers, will you note Murray D. Welch, of counsel; the Organization is represented by the firm of Tibbetts, Lewis, Lazo & Welch.

Mr. Stewart: Just to keep you familiar with the state of the record, Central Tube is named as a respondent. The record shows they were out of business prior to the date the complaint was filed. I do not believe there is any appearance for it at all. There is a motion, as I recall it, in that connection to dismiss it at a respondent. I may be mistaken.

Trial Examiner Norwood: The Commission denied the motion, didn't they?

Mr. Stewart: I do not recall. I did not file it. I want to keep you familiar with the record.

14 Mr. MacIntyre: I believe the record shows that the motion was denied without prejudice.

Trial Examiner Norwood: I think so.

Well, you can renew that motion before the Commission at any time. We are here to get the facts, and we do not find it necessary to decide finally many of these little points that casually arise.

Now, as to corrections, corrections to the record. I suppose we will have daily copy here, so it is the rule of the Commission that counsel furnish duplicate lists of suggested corrections, give one to the opposite side, and I should like to have one at the same time so that I can verify before the counsel agree on it, in case I think it advisable, so submit those daily, if you can, and we can keep the record up to date.

The corrections should be mentioned at the opening so that the Reporters and the people in the Docket who make

these corrections will not have to look through the entire record to find corrections, but may find them at the beginning of each period.

Are there any further statements?

Mr. King: If Your Honor please, I have a motion.

I appear for Clayton Mark & Company.

I move to dismiss count 2 of the complaint on the ground that it shows on its face the Commission has
15 complete lack of jurisdiction over the subject matter.

I ask that that matter be ruled on by Your Honor. If Your Honor feels that you cannot rule it but must refer it to the Commission, I ask the Commission to give a ruling on that motion, and I am willing to submit it on the record without argument to the Commission, but I think we are entitled to a definite ruling from the Commission on count 2 for its uniqueness before we proceed any further with this case.

Trial Examiner Norwood: I will ask counsel, as a matter of convenience, to write out his motion and submit it to the Secretary, and then refer to the record.

Mr. King: I will be glad to do that, sir.

Trial Examiner Norwood: I have not the authority to dismiss with respect to any respondent. It requires a majority of the Commission to dismiss.

Mr. Stewart: Well, I should like to get one matter clear.

Do I understand someone suggested that such a motion or such an objection, if made by one counsel, shall be to the benefit of all, in so far as they do not disclaim any responsibility in that connection? Is that the understanding?

Trial Examiner Norwood: Well, if the circumstances are the same with respect to the other respondent, certainly the same reasons would apply.

Mr. Stewart: What I am trying to avoid is the
16 necessity of half a dozen or a dozen making the same objections, and just suggesting in the absence of disclaimer on the part of any particular counsel, if objection is made by one counsel it shall inure to the benefit of all without repeating it.

Trial Examiner Norwood: Oh, as to evidence?

Mr. Stewart: Yes.

Trial Examiner Norwood: Objections as to evidence?

Mr. Stewart: Yes.

Mr. MacIntyre: May we go off the record?

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Mr. Stewart: I will state it so that everybody understands it: That in the event of an objection by any of the counsel for the particular respondents, in the event such objection is not disclaimed by any of the counsel for such respondents, the objection shall inure to the benefit of all respondents.

Trial Examiner Norwood: Well, that will be the same as to an exception.

Mr. Stewart: That is right.

Mr. MacIntyre: If Your Honor please, I accept that with this modification: That when counsel for one respondent objects—makes a timely objection to receipt of evidence or exception to a ruling of His Honor, when
17 made timely, may inure to the benefit of all respondents.

Mr. Stewart: Unless disclaimed. There might be times we don't want to join in the objection.

Mr. MacIntyre: Yes; unless disclaimed; unless timely disclaimed.

Trial Examiner Norwood: Now, I will speak as to off-the-record conversations. If any counsel at any hearing objects to an off-the-record statement or discussion, we shall not go off the record, but in the absence of that we might go off the record to expedite the proceedings where counsel are not committing themselves, and it permits of a freer discussion—and sometimes it is very constructive—but if counsel wants to object, it is a matter of honor not to try to use anything that is said during those off-the-record discussions. They are just not to be matters of record at all.

Is that agreeable?

Mr. Stewart: Yes, that is—

Mr. Moore: May I ask, Mr. Examiner, about exceptions. Is it necessary just to state exceptions or is it understood that exceptions are granted?

Trial Examiner Norwood: Well, we usually have a stipulation that an exception is deemed to have been taken at the proper time to every adverse ruling, but that is by agreement.

18 Mr. MacIntyre: I agree to such a ruling as that at this time.

Trial Examiner Norwood: Anything further?

Mr. Stewart: Now, Mr. Poskanzer's inquiry was as to whether or not our stipulation covers motions, and I take it it does not the way it is worded.

Mr. Poskanzer: Yes; that stipulation relates to evidence.

Mr. Stewart: No, it does not, as I understand it, so I would assume that if the rest of us want to join in Mr. King's motion we should so state, and, so far as I am concerned, I join in it in behalf of my clients.

Trial Examiner Norwood: Yes, I think so. This only relates to evidence.

Mr. Stewart: That is the reason I suggested we join in Mr. King's motion.

Trial Examiner Norwood: Well, make your statement.

Mr. Stewart: All right.

In view of the fact that the stipulation which is on the record relates to matters of evidence, Mr. King has made a motion to dismiss count 2 of the complaint here. I suggest that we also stipulate that all counsel who did not object be deemed to have joined in Mr. King's motion.

Mr. Austin: If Your Honor please, representing the wholesalers who are not respondents in count 2, I
19 disclaim any part of that motion.

Mr. Taylor: If Your Honor please, I would like to join in Mr. Austin's motion.

Trial Examiner Norwood: For what company is that?

Mr. Taylor: Westinghouse Electric Supply Company.

Mr. Moore: Mr. Examiner, may it be understood that we all join in the stipulation which Mr. MacIntyre agreed to make, or offered to make, with reference to exceptions?

Trial Examiner Norwood: Yes. I asked if there was any objection. They all assented to it. Well, I will state to the counsel who have joined in that motion to dismiss that the Commission will hear it. I request them as a matter of convenience to write the motion out and give it to the Secretary and then refer to the record of this morning's proceedings and they will appoint a time to hear you.

Mr. MacIntyre: If Your Honor please, I think there is a bit of confusion with respect to this motion as announced by Mr. Poskanzer. The stipulation that I have entered on the record did not cover motions. It covers objections to receipt of evidence.

Trial Examiner Norwood: That is understood.

Mr. MacIntyre: And exceptions to rulings, and I believe that the record, however, for the purpose of Mr. King's motion, has been covered this morning anyway by virtue of all those here having joined in, except those
20 who have affirmatively disclaimed it.

Mr. King: Do you join in it, too, Mr. MacIntyre? You said "all."

Mr. MacIntyre: All those except the respondents. I haven't joined in it, Mr. King.

Trial Examiner Norwood: I take it all of the counsel, excepting those who have disclaimed, have joined in the motion to dismiss.

Mr. Welch: I might state that the Organization Service Corporation, parties defendants, are not made parties thereto, so I presume that we have not joined in that motion.

Trial Examiner Norwood: Call your witness.

Mr. MacIntyre: May we proceed?

The first thing, Your Honor, that I would like to offer this morning is a stipulation which has been signed by counsel for the Commission and by counsel for the Respondents. I will give a copy of this to the Reporter so that it may be entered of record. If the respondents care for me to read it, I can do so so that they will know what is taking place. I don't know that it is necessary unless they desire. It is the stipulation dated May 28, 1941, as revised July 30, 1941, concerning authentication and identification of evidence—documentary evidence.

Trial Examiner Norwood: Who entered into that?

Mr. MacIntyre: Counsel for the Commission and
21 counsel for the respondents.

Trial Examiner Norwood: All of the respondents?

Mr. MacIntyre: Yes.

Mr. Moore: Excuse me, Mr. Examiner.

Shouldn't you say "amended" instead of "revised"? The second stipulation—there is no attempt to revise the first one. It should be an amendment.

Mr. MacIntyre: Thank you. It is more properly termed an amended stipulation; that is, it was entered into May 28, 1941, and amended July 30, 1941.

Trial Examiner Norwood: The stipulation is as follows:

UNITED STATES OF AMERICA.

BEFORE FEDERAL TRADE COMMISSION.

In the Matter of:
Rigid Steel Conduit Association, *et al.* } Docket No. 4452.

AMENDED STIPULATION.

In order to expedite and facilitate the trial of the above-entitled proceeding, it is stipulated by and between the undersigned counsel:

Each of the respondents agrees that, upon written
22 request of counsel for the Commission, such respondents will produce and submit to counsel for the Commission, within ten days after the receipt by counsel for such respondent of such request, any particularly specified document or documents, if the same be in the possession of such respondents or counsel.

Each of the respondents agrees that he or it admits the authenticity of any documents, whether the original or a copy, produced from the files of any respondent, the authenticity of which is admitted by counsel for the respondent by or for whom such documents were produced, purportedly written or received.

Each of the respondents further admits and agrees as to each document or record, the genuineness or authenticity of which has been certified by the counsel for any respondent, that such document or record was duly sent or received as indicated on the face of the same or in the certification of the genuineness or authenticity of it, provided, however, that this paragraph shall not operate as an admission of the receipt of any such document or record by any person or corporation to whom it purports, or shall have been certified, to have been sent, if any respondent or its counsel shall introduce in this proceeding evidence that such document or record was not received by such person or corporation.

Each of the respondents further admits and agrees as to all copies or photostats of documents or records,
23 the genuineness and authenticity of which have been certified by counsel for any respondent, that they are

true and correct reproductions of the documents or records from which they purport to be reproduced.

Each of the respondents further agrees that he or it and his or its counsel will cooperate with the Commission's counsel in making all certifications necessary as to documents, papers and other records which have been produced or shall be produced by such respondent to the end that the Commission's counsel shall not be required to prove that such documents, papers and records have been so produced.

It is further agreed that this stipulation shall apply only to documents as to which counsel for the Commission has, since May 28, 1941, received from a respondent, a respondent's representative or counsel for a respondent, a statement of the fact that such document or documents are genuine or authentic or have been produced or furnished by such respondent, irrespective of whether such documents shall have been secured before or after the signing of this stipulation.

Provided, however, and it is expressly understood and agreed, that each of the respondents reserves all objections and exceptions to all letters, telegrams, memoranda and other documents and records affected by this stipulation, except as to the identification and authentication thereof.

Provided Further, and it is expressly understood
24 and agreed, that as to any letter, telegram, memorandum or other document or record or copy thereof affected by this stipulation, if a representative, employee or agent of a respondent by whom such letter, telegram, memorandum or other document or record purports to have been prepared, executed, signed, transmitted or distributed, as the case may be, shall in testimony in this case specifically deny any connection with or participation in, or responsibility for, the preparation or signing thereof, if such document purports to have been signed by him, then as to such document this stipulation shall be of no effect.

Dated May 28, 1941, and revised, dated July 30, 1941.

(Signed) Everette MacIntyre,
Counsel for the Commission.

(Signed) P. C. King, Jr., and E. S. Ballard.
Attorneys for Respondent Clayton Mark & Company.

(Signed) Illch & Poskanzer,
Attorneys for Respondent Cohoes Rolling Mill Company.
(Signed) Stewart and Lewis,
(Signed) W. Deming Stewart,
Attorneys for Respondents Enameled Metals Company, Steelduct Company and Lawrence R. Quinn.
(Signed) T. F. Patton and A. J. Gentholts,
Attorneys for Respondents Fretz-Moon Tube Company, Inc., Republic Steel Corporation, Steel and Tubes, Inc., and J. M. Barton.
(Signed) Gerard Swope, Jr.,
Attorney for Respondents General Electric Company, General Electric Supply Corporation and A. E. Newman.
(Signed) Lewis, Rice, Tucker, Allen & Chubb, by Milton H. Tucker,
Attorneys for Respondents Laclede Steel Company and Laclede Tube Company.
(Signed) James M. Houston,
Attorney for Respondents National Electric Products Corporation, I. A. Bennett, Frank C. Hodkinson and Charles Donley.
(Signed) Morton Peyser,
Attorney for Respondents Triangle Conduit and Cable Company, Inc. and The M. B. Austin Company.
(Signed) Sullivan & Cromwell,
Attorneys for Respondents Spang Chalfant, Inc., and H. G. Morrow.
(Signed) Montgomery & McCracken,
Attorneys for Respondents Walker Brothers and H. S. Walker.

26 (Signed) Cravath, deGersdorff, Swaine & Wood,
Attorneys for Respondent The Youngstown Sheet and Tube Company.
(Signed) Monroe, Byrne & Kaye,
Attorneys for Respondents George L. Hatheway, Regina G. Hatheway, Katherine R. Hatheway and Jane Hatheway, partners trading as Clifton Conduit Company.
(Signed) Tibbetts, Lewis, Lazo & Welch,
Attorneys for Respondents Organization Service Corporation, Herbert S. Blake, Herbert S. Blake, Jr., M. Myles Brown, Thomas B. Jordan, Paul Weiss, C. C. Gregory and Robert S. Booth.
(Signed) Breed, Abbott & Morgan,
Attorneys for Respondents The National Electrical Wholesalers Association, J. G. Johannesen, D. L. Fife, Alfred Byers, W. S. Blue, W. J. Drury, A. H. Kahn, C. H. McCullough, H. E. Rasmussen, H. O. Smith, L. E. Latham, F. R. Eiseman, W. R. Kiefer, H. B. Tompkins, A. L. Hallstrom, A. S. Riechman, D. M. Smith, E. B. Latham & Company, Fife Electric Supply Company, Columbian Electrical Company, W. T. McCullough Electric Company, Peerless Electric Supply Company, The Hardware and Supply Company, Revere Electric Company, Keifer Electrical Supply Company, F. D. Lawrence Electric Company and The C. S. Mersick and Company.

27 (Signed) Thomas J. Ward,
Attorney for Respondent Graybar Electric Company, Inc.
(Signed) Harold Smith,
Attorney for Respondent Westinghouse Electric Supply Company.

Trial Examiner Norwood: Proceed.

Mr. MacIntyre: I would like now to offer, if Your Honor please, a stipulation signed by Sullivan & Cromwell which relates to the stipulation just received.

Trial Examiner Norwood: The stipulation is as follows:

Sullivan & Cromwell.

48 Wall Street, New York,
July 11, 1941.

Everette MacIntyre, Esq.,
Federal Trade Commission,
Washington, D. C.

Re: Docket 4452—In the Matter of Rigid Steel Conduit Association, et al.

Dear Mr. MacIntyre:

On July 9, 1941 Robert W. Eiler, Esq., in conference with you in Pittsburgh, admitted the genuineness and authenticity of certain documents and records, as attorney for H. G. Morrow.

28 We hereby stipulate that as to all such documents and records where Robert W. Eiler has admitted and agreed to their genuineness and authenticity as attorney for H. G. Morrow, such admission and agreement may be applied in the above-entitled proceedings, pursuant to the stipulation dated May 28, 1941, with the same force and effect as if signed by the undersigned.

Very truly yours,
(Signed) Sullivan & Cromwell.

Mr. MacIntyre: If Your Honor please, I would like now to offer a further stipulation that relates to the first one that I have placed on the record concerning identification and authenticity of certain documents. This is a

stipulation that was signed by August 20, 1941, by Mr. James Houston, attorney for Frank C. Hodkinson, respondent. If the respondents would care for me to, I will read it so that they may know the terms of it.

Mr. Stewart: Yes, we would like to.

Mr. MacIntyre: I don't know whether it is necessary for me to read it off the record, or I can read it on the record and it will be copied.

"It is hereby stipulated, admitted, and agreed by the undersigned James M. Houston, attorney in this proceeding for Respondent Frank C. Hodkinson, that each of the documents which F. C. Hodkinson and the undersigned James M. Houston have admitted and agreed were produced from the files of, and furnished by, said F. C. Hodkinson and which bear the initials F. C. H. or T. H. B. as the writer, were in fact written by Frank C. Hodkinson as supervisory agency roughing-in classification of National Electrical Manufacturers Association or under his supervision or at his direction and sent to the parties addressed in due course," dated August 20, 1941, signed "James M. Houston, Attorney for Frank C. Hodkinson, in Federal Trade Commission Docket No. 4452."

Mr. Stewart: Speaking for myself, I wouldn't accept that on behalf of my clients.

Mr. King: I object to the stipulation on behalf of Clayton Mark & Company on the ground that those letters, or some of the letters, covered by that stipulation are wholly inadmissible in this proceeding for any purpose whatsoever.

Trial Examiner Norwood: Well, this stipulation, as I understand it, only goes to the identification of the papers.

Mr. King: And I have objected to them, to the identification and relevancy.

Trial Examiner Norwood: You may object to all these, when they come up, as to their relevancy.

Mr. King: I am objecting to the present stipulation both as to relevancy and the identification, so far as Clayton Mark is concerned.

Trial Examiner Norwood: This is a stipulation between another counsel and another respondent and the Government.

Mr. Stewart: Well, I assume, unless I misinterpreted Mr. MacIntyre's position, that he is offering this and if we

don't object he understands that we accept it. Well, if I am wrong about that I haven't anything more to say, but as I understand, the part that I am objecting to—I have no objection to the authenticity, but I do object to that part of it which concedes that the documents were sent to the persons to whom they were addressed.

Mr. Moore: Well, I didn't understand the stipulation to go that far.

Mr. Stewart: Yes, that is what it says. That is exactly what it says.

Mr. Moore: May I see it, please?

Mr. Stewart: Sure. Excuse me.

Mr. Moore: I understood that it went no further than to the authenticity.

Mr. Stewart: May I read this?

Trial Examiner Norwood: It has been read once
31 for the record. Read it off the record.

(Discussion off the record.)

Mr. Moore: Then we object to that stipulation.

Trial Examiner Norwood: Then counsel was not a party to the stipulation?

Mr. Stewart: No, sir; but unless I am mistaken, Mr. MacIntyre expects us to agree to this unless we object to it. I want to make it plain I am not agreeing. If he is only offering it as to Mr. Houston and his clients, I have nothing to say, but if he will make that clear then we will stop this discussion.

Mr. MacIntyre: If Your Honor please, I have offered this as a stipulation and an agreement signed by Mr. Houston, counsel for one of the respondents in this case. It is such, of course, must have application, in so far as it reaches, under its own agreement and any other agreements or rules of evidence applicable here.

Trial Examiner Norwood: Well, as I understand it, then, all of the other counsel object to that as evidence.

Mr. Stewart: That is right.

Mr. Moore: Yes.

Trial Examiner Norwood: Yes. Well—

Mr. Stewart: Or as a basis for the admission of those documents, in order that you understand what we are driving at.

32 Trial Examiner Norwood: I understand it thoroughly.

Mr. Stewart: These are documents that were written during the N. R. A.

Trial Examiner Norwood: I shall overrule the objection and give the counsel concerned the benefit of the objection.

Mr. Stewart: Thank you.

Mr. Moore: May it be understood, Mr. Examiner, what the objection is?

On behalf of our clients we do not object to a stipulation that papers that have been signed by Mr. Houston or by Mr. Hodkinson are authentic, but we do not admit that they were sent—there is no stipulation on our part, whatever they were. They may have been written and authenticated as written, but we do not agree that they were sent, and I would like to have that objection also noted on behalf of Mr. Patton and the clients of Mr. Patton and Mr. Gentholts for whom we are pinch hitting for the day.

Trial Examiner Norwood: I understand that. Here is an admission by one of the respondents that these papers were sent at certain times. That goes in for just what it is worth and binds the parties that made the admission.

Mr. Stewart: It is a little broader than that. In order to expedite the matter, we agree that where counsel for the particular respondent certified as to the genuine-
33 ness of the document that the rest of us would accept that. Now, I take it that this stipulation of Mr. Houston's is offered in connection with the original stipulation and in order to tie us into it, to bind us all, but we all reserve the right, if the facts show the contrary, to object, and I want to make it plain that I am not accepting Mr. Houston's concession as to the N. R. A. documents.

Trial Examiner Norwood: All I am doing now is receiving the stipulation as a part of the record, and you have made your motion here, and you are protected by the exception.

Mr. Stewart: That is right.

Trial Examiner Norwood: And I overruled any objection to receiving that as part of the record.

Mr. Peyser: Do I understand it that the exception goes to the benefit of all counsel?

Trial Examiner Norwood: That inures to the benefit of all.

Proceed.

Mr. MacIntyre: May I inquire whether or not anyone

who has made an objection to this stipulation of Mr. Houston is doing so now as an attempt to modify or to withdraw from any of the stipulations which they have signed?

Trial Examiner Norwood: I don't think the counsel—

Mr. MacIntyre: I think the record should be made
34 clear as to whether or not that is an attempt—

Trial Examiner Norwood: No, counsel—let us proceed here. These stipulations—

Mr. MacIntyre: We tried to make them clear.

Trial Examiner Norwood: —they speak for themselves.

Mr. Moore: Well, but, Mr. Examiner, do I understand your ruling is that the stipulation is admitted in the record as binding anyone except the parties that have signed it?

Trial Examiner Norwood: Signed thereto. Of course, facts may be admitted by one respondent and the facts may have certain effects on other respondents. I am not trying to suspend the operations of logic.

Go ahead.

Mr. MacIntyre: If Your Honor please, this has me in quite a quandary, and I would like to ask the question whether or not there is any attempt—

Trial Examiner Norwood: No; counsel is out of order. Now, call your witness. Go ahead.

Mr. MacIntyre: May I inquire of Mr. Stewart whether he has with him the minutes of the meeting of the Rigid Steel Conduit Association which we have requested that he submit, so that we may verify complete the documents that we have available.

35 Mr. Stewart: Well, in order that the record may be clear on that and not enter into any dispute, Mr. MacIntyre sent me a list of minutes that he had and asked me to give him the minutes that I had and which he did not have. Except as to certain minutes of technical meetings I have endeavored to comply, and here are the minutes in so far as I have them with me at the moment. The rest of them are on the way, back to 1924. There are some others that I don't have with me and I will give them to you. What I am trying to say is that I don't have the minutes. I couldn't carry them all.

Mr. MacIntyre: These are the minutes that were not included on the list that I sent you?

Mr. Stewart: That is right.

Mr. MacIntyre: But do include all the minutes except the technical minutes and were in the Association?

Mr. Stewart: That I have; yes, sir. Back to 1921, as a matter of fact, I think there is one there.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

(Documents were thereupon marked for identification "Commission's Exhibits Nos. 1-A, 1-B, and 1-C.")

Mr. MacIntyre: If Your Honor please, I have had marked for identification as Commission's Exhibit 1-A to C, inclusive, being sheets of paper which purport to
36 be the by-laws of the Rigid Steel Conduit Association. I would like to offer those in evidence at this time.

Mr. Stewart: For the benefit of—

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: We will have a five minutes' recess.

(There was a short recess taken.)

Trial Examiner Norwood: Proceed.

Mr. Moore: Mr. Examiner, I would like to inquire from counsel for the Commission whether he has completed his offer—the last document which was offered.

Mr. MacIntyre: Commission's Exhibit 1-A to C, inclusive, we offer that as tendered. I have completed my offer on that.

Trial Examiner Norwood: Yes.

Mr. MacIntyre: I don't know whether there have been any objections stated or any ruling.

Mr. Moore: Well, I asked the question in order not to interrupt. It seems to me we should take occasion on this offer to get to an understanding as to what the offer means. As I understand it, this is offered as a document taken from the files of Walker Brothers; nothing else. There is no date on it. There is nothing to say what it is except as it is entitled. Therefore, if the offer goes
37 no further than that I think we ought to know it. If, on the other hand, it is offered as something, then that is a very different offer.

Mr. MacIntyre: If you please, this is not offered as a document coming from the files of Mr. Walker. It so happens that it did so come from those files. I am offering it as the by-laws of the Rigid Steel Conduit Association. I thought I had so specified.

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Mr. Moore: You did, but you stated that that is what it is. But are you offering it as such?

Mr. MacIntyre: I am offering it as such.

Mr. Moore: At what time is it in effect? I ask that, Mr. Examiner. I don't know whether the by-laws were adopted at a time when our client may have been a member of the Association or after, whether it was ever in effect at any time when our client may have been a member of the Association. Certainly as by-laws of the corporation we object to it—of the Association. I beg your pardon.

Mr. MacIntyre: I offer it, then, Mr. Moore, as the by-laws of the Association as effective June 3, 1936.

Mr. Moore: Well, then, I think we must object to that offer on behalf of Youngstown Sheet & Tube Company and the clients of Mr. Patton and Mr. Gentholts.

Mr. Tucker: A similar objection, if Your Honor please, for the Laclede Steel Company and the Laclede Tube Company.

38 Mr. Peyser: A further objection on behalf of the M. B. Austin Company on the ground that at no time was the Austin Company a member of the Association nor is it alleged as such.

Mr. King: I would like to have it understood that I have a standing objection, to save time, all testimony tending in any way to substantiate the charges in count 2 on the ground that the Commission has not sufficient jurisdiction. I would like to add to Mr. Moore's objection to Exhibit 1-A to C on the ground that the document has not been properly explained and qualified for admission in evidence.

Trial Examiner Norwood: I am going to bring that out.

I ask counsel now if there is any evidence or stipulation that fixes the time under those by-laws?

Mr. MacIntyre: If Your Honor please, there is not at this time in the record any stipulation that covers this offer as it now stands. I didn't think, it being one of the originals, that it would be necessary, but now I will ask for an admission and stipulation to that effect. I will ask Mr. Walker, as attorney for the Walker Brothers, if he will admit that Commission's Exhibit 1-A to C, inclusive, is a document which Mr. H. S. Walker, president of the Walker Brothers and president of the Rigid Steel Conduit

Association, on June 3, 1936, gave to an investigator
39 of the Federal Trade Commission with the statement
that it was at that time the by-laws or a statement of the by-laws of the Rigid Steel Conduit Association. I will ask him to so stipulate.

Mr. Moore: Well, you say "at that time," but you don's say what the time was.

Mr. MacIntyre: I said June 3, 1936, Mr. Moore.

Mr. Moore: That was the date of the by-laws, but the date that you refer to—

Mr. Stewart: Oh, no, that was the date when he got them.

As I understand it, Mr. Examiner—I think I am a little more familiar with the by-laws situation than counsel for the Commission. As I understand it, the Commission's examiner consulted Mr. Walker on June 3, 1936. At that time Mr. Walker produced this document and to what extent that he agreed they were the by-laws I don't know, but the point is there is no proof as to when the by-laws became the by-laws. The fact that Mr. Walker said they were the by-laws on June 3, 1936, does not answer the problem as to when they became the by-laws of the Rigid Steel Conduit Association, and in order to prove when it went in effect you would have to prove when it was accepted by all the members.

Trial Examiner Norwood: Well, this proves some particular time when these were in effect. They were in ef-
fect on the date that he mentioned there. That is, he
40 states that they are. Now, has that been stipulated?

Mr. MacIntyre: No.

If Your Honor please, I would like at my request, for the stipulation to be read to Mr. Walker so that he will understand it.

Mr. Walker: I have the stipulation.

It is a fact that those were taken from the files of Walker Brothers on June 3, 1936. I do not know, of course, what was said at the time.

Mr. King: I renew my objections.

Trial Examiner Norwood: Yes, sir.

Mr. Peyser: I renew my objections.

Trial Examiner Norwood: Do you have anything further?

Mr. MacIntyre: My offer is renewed to make the stipulation.

Trial Examiner Norwood: If you will undertake to show that these by-laws obtained at that time, I will admit it with that understanding.

Mr. MacIntyre: The stipulation is that they were procured by an investigator of the Federal Trade Commission from Mr. Walker, the president of the Rigid Steel Conduit Association, on that date.

Trial Examiner Norwood: But, as the counsel said, they were delivered to him as some by-laws of the
41 Association, delivered as of that particular date, but it hasn't been made clear that they were the by-laws that obtained on that date.

Mr. MacIntyre: If Your Honor please—

Trial Examiner Norwood: If counsel will undertake to show that later on we can—

Mr. MacIntyre: I renew my offer with a statement of the understanding that I will offer proof that Mr. Walker, president of the Rigid Steel Conduit Association, on June 3, 1936, handed these papers to an investigator of the Federal Trade Commission with a statement that they were the by-laws of the Association, and that Mr. Walker was president of the Association when they were so handed to him.

Mr. Moore: Well, Mr. Examiner, I think that they should be no more than identified. They are nothing at the present time. They are not competent in any respect.

Trial Examiner Norwood: Well, as I understand it, they are identified in the stipulation as papers coming from those files.

Mr. Moore: But my point is that they should not be in the record for any other purpose than identification awaiting proof at such time as counsel for the Commission may wish to offer proof.

Trial Examiner Norwood: Well, we have to do that sometimes subject to being stricken if they are not properly connected.

42 Mr. Moore: But the offer is simply that they were taken from the files of Walker Brothers as a document, and at that time some statement was made by somebody to a representative of the Commission, who is not called as a witness, as to what it is, what the document is. It seems to me that is not evidence.

Trial Examiner Norwood: Well, counsel has made it safe for me to receive those with the condition that I placed upon it.

Mr. King: May I understand that condition, if Your Honor please.

Trial Examiner Norwood: The condition is he is to offer evidence to show that it was delivered to a representative of the Federal Trade Commission, and at that time it was the by-laws then obtaining.

Mr. King: Well, then, I renew my motion.

Trial Examiner Norwood: I shall overrule the objection and receive the exhibit, Commission's Exhibit No. 1-A to 1-C, inclusive.

COMMISSION'S EXHIBIT NO. 1-A, 1-B, and 1-C, were offered and received in evidence.

Mr. Peyser: Mr. Examiner, I understand you are not ruling on objection, that it was not a member of the Association as alleged in the complaint, and that as to it
43 the by-laws are irrelevant and immaterial.

Trial Examiner Norwood: I am receiving this evidence in this case as to whatever respondent the record may show it applies, so there is really no necessity of making your motion every time, because if it should develop that he did not belong to it, or for any reason it is shown why it does not apply, or cannot apply, it will not be applied.

44 Mr. McIntyre: If Your Honor please, I would like to have these papers marked for identification as Commission's exhibits.

(The documents referred to were marked for identification "Commission's Exhibits Nos. 2-A to 2-Z-327")

Mr. MacIntyre: As I understand it, Mr. Stewart, you are submitting these papers which have been marked for identification as Commission's Exhibits 2-A to 2-Z-327, inclusive, as minutes of the Rigid Steel Conduit Association which have been in your possession for some time.

Mr. Stewart: Well, to be quite explicit about it, all I know about these documents is they show on their face—they purport to be copies of the minutes of the Rigid Steel Conduit Association. I know nothing about them. I found them among the files of the Rigid Steel Conduit Association. So far as I know they are copies, but I do not know whether they are or not.

Mr. MacIntyre: But they were part of the records of Rigid Steel Conduit Association which were turned over to you by the officers of that Association?

Mr. Stewart: That is right.

Mr. Moore: Do I understand you to say part of the records or part of the files?

Mr. Stewart: Part of the files. I found them
45 among the files. I do not know—they purport on their face to be copies, they are typewritten, with typewritten signatures.

Mr. King: Would you mind giving us the dates they cover; that is, one day to another, if that is possible.

Mr. MacIntyre: We cannot do that now. It is impossible. But we will do so a little later during the day.

Mr. Stewart, do you contend at this time that any part of these papers are not records of the minutes of the meetings of the Rigid Steel Conduit Association?

Mr. Stewart: Well, I do not understand I made any contention of any kind. You are asking me what the documents were, and I told you. All I know about them is that they are copies and I found them in the files. They are typewritten with typewritten signatures. Whether they are true and correct copies, I do not know. I have no way of knowing. I could ascertain from somebody, I suppose, as to whether they are correct, but if you want them to go in with that stipulation—

Mr. MacIntyre: Well, you do not deny that they are records of the Association?

Mr. Stewart: Well, I do not say they are; I do not make an admission one way or the other.

Mr. MacIntyre: I say, you do not deny that they are?

Mr. Stewart: I say, I make no admission one way
46 or the other.

Mr. MacIntyre: Well, Mr. Stewart, would you take these papers at this time and handle them pursuant to Rule 19 of the Commission's Rules of Practice for admission of their genuineness and authenticity as minutes of the meetings of the Rigid Steel Conduit Association; that is, without putting us to the trouble of formally making that demand other than on the record?

Mr. Stewart: I am sorry, I do not carry the rules in my head, but if what Mr. MacIntyre is asking me to do is to ascertain from someone who ought to know whether or not they are genuine or not, I shall do so. Now, if that is what you want I will do it, because I just got them last week and they were among a collection of documents in five file cases, and then Mr. Williams came in on me, and he had them, so I have not had any chance

to ascertain anything about them; but if you want me to ascertain from somebody who ought to know whether these are copies of the minutes, I will do so.

Mr. MacIntyre: Well, will you accept them now as if I had served upon you a written notice under Rule 19 for your reply as to whether or not they are?

Mr. Stewart: Well, I will have to look at Rule 19. The point about it is there is no necessity for serving a written notice upon me about anything. All you have to do is to ask me to do something.

47 What is Rule 19?

Mr. MacIntyre: I am attempting to comply with the rules as written.

Mr. Stewart: Yes. Just as soon as I can ascertain whether or not the documents are what they purport to be I shall make an admission in compliance with Rule 19.

Mr. MacIntyre: In other words, you will take them here under these circumstances as if I had written you pursuant to Rule 19.

Mr. Stewart: Yes, if that is what you are trying to say, yes. You do not need to have any written request.

Trial Examiner Norwood: Is that a proffer yet?

Mr. MacIntyre: No. I want Mr. Stewart's reply.

Mr. Stewart: Now, there is nothing but minutes, because you have these marked. I wonder if you have anything else in here.

Mr. MacIntyre: No, the only thing in there is what you handed me; they are marked Commission's Exhibit 2.

Mr. Stewart: I thought maybe among your copies there are some other documents.

Mr. MacIntyre: The record may show I am handing Mr. Stewart Commission's Exhibit, for identification, 2-A to Z-327, inclusive.

Mr. Stewart: Is there any disposition to pin me down to any time? I cannot do this overnight.

48 Mr. MacIntyre: The rule calls for reply within 10 days. I was trusting, however, that we would be able to get a reply from you before Friday of this week.

Mr. Stewart: All right. I will try to do so.

Mr. Moore: What is the effect if he should be unable to do that? Would it apply to any of the rest of us?

Mr. Stewart: Of course, there is no more reason why I should be put in the position of having to admit them than the rest. I do not know anything more about them than the rest. I just happened to have the files.

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Mr. MacIntyre: Well, we trust then the others will be able to assist you, Mr. Stewart.

Mr. Moore: Well, Mr. Examiner, may I not have my question answered—that he outline the position where there is a time limit to the rule—and not carrying the rule in mind—if there is a time limit in the rule, if for any reason Mr. Stewart could not comply with the rule, does that mean these documents are admitted in evidence and bind all of us? Certainly I want to object to the application of any such rule to our client at the present time.

Mr. King: I would like to make the same objection as to my client, too, if Your Honor please.

Trial Examiner Norwood: Well, I think we had better climb that hill when we get to it.

Let us see if the counsel can identify those papers
49 first, and we will take up that question.

Proceed.

Mr. MacIntyre: Now, if Your Honor please, we have here a number of additional minutes of meetings that we want to mark for identification, and I would like to save the time rather than taking out recesses, as we did just prior to this period this morning, and if we can adjourn now and come back earlier than we otherwise would I think we can have some arrangement for the others to be marked by the Reporter in the meantime.

50 Afternoon Session 1:15 P. M.

Mr. MacIntyre: I ask to have the following exhibits marked for identification: Commission's Exhibits 3-A and B, 4-A, B, C, 5-A, B, C, 6-A, B, C, 7-A, B, C, 8-A, B, C, 9-A, B, C, D, and E, 10-A, B, C, D and E, 11-A to L, inclusive, 12-A, B and C, 13-A, B and C, 14-A to E, inclusive, 15-A to F, inclusive, 16-A, B, C, and D, 17-A, B, C, and D, 18-A to K, inclusive, 19-A to G, inclusive, 20-A to K, inclusive, 21-A, B, C and D, 22-A to F, inclusive, 23-A to H, inclusive, 24-A to Z-3, inclusive, 25-A to F, inclusive, 26-A, B, C and D, 27-A to H, inclusive, 28-A to I, inclusive, 29-A to E, inclusive, 30-A to Q, inclusive, 31-A to G, inclusive, 32-A to F, inclusive and 33-A to K, inclusive.

Mr. MacIntyre: If your Honor please, I have here a document marked for identification as Commission's Ex-

hibit 3-A and 3-B, minutes of the Rigid Steel Conduit Association meeting of January 17, 1935.

Trial Examiner Norwood: Is that 3-A to B?

Mr. MacIntyre: 3-A and 3-B.

Trial Examiner Norwood: And 3-B.

Mr. MacIntyre: These minutes have been certified to by—that is, the authenticity and identification of them
51 have been certified by counsel for one of the respondents, and pursuant thereto have been certified to by counsel for all respondents under stipulation of May 28 as amended July 30, and which was placed on the record this morning. I offer this in evidence at this time. I may state for the record that the reverse side of each of these sheets shows the certification of the authenticity and identification.

(The documents previously referred to were marked "Commission's Exhibits 3-A and B, 4-A, B, C, 5-A, B, C, 6-A, B, C, 7-A, B, C, 8-A, B, C, 9-A, B, C, D and E, 10-A, B, C, D and E, 11-A to L, inclusive, 12-A, B and C, 13-A, B and C, 14-A to E, inclusive, 15-A to F, inclusive, 16-A, B, C and D, 17-A, B, C and D, 18-A to K, inclusive, 19-A to Z, inclusive, 20-A to K, inclusive, 21-A, B, C and D, 22-A to F, inclusive, 23-A to H, inclusive, 24-A to G-3, inclusive, 25-A to F, inclusive, 26-A, B, C and D, 27-A to H, inclusive, 28-A to I, inclusive, 29-A to E, inclusive, 30-A to Q, inclusive, 31-A to G, inclusive, 32-A to F, inclusive and 33-A to K, inclusive," for identification.)

Mr. Austin: If your Honor please, for the Wholesalers I represent I would like to object to this in that it is absolutely irrelevant so far as the wholesalers are concerned.

Mr. Welch: Mr. Examiner, for the record also I
52 would like to object to it because it deals with a period prior to the time the officers of the Organization Service Group of respondents had anything to do with the Rigid Steel Conduit Association.

Mr. Taylor: If your Honor please, I would like to join in Mr. Austin's objection on behalf of my client, the Wholesaler.

Mr. King: If your Honor please, I object to the exhibit as being incompetent, irrevelant and immaterial, in the first place; in the second place, it has not been properly qualified; and, in the third place, covering a period which was during the existence of the NRA.

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Mr. MacIntyre: I don't understand Mr. King is objecting to the identification of it when he says "qualified".

Mr. King: The same objection I am making as I made to the other document and Mr. Moore also made to the Commission's Exhibit 2-A to Z-327.

Mr. MacIntyre: You are not objecting to this document as not being identified, though; are you?

Mr. King: I am objecting to it as not being properly qualified. It is a photostat apparently of a carbon copy.

Mr. MacIntyre: Are you objecting to it because you think it isn't identified, or what is the basis of the—

Trial Examiner Norwood: He doesn't want to an-
53 swer that question. I think his objection shows what it is. You don't have to quiz him about it.

Mr. King: Thank you, sir.

Trial Examiner Norwood: Are there any further objections?

Mr. Gilpatric: On behalf of the Youngstown, Mr. Examiner, I object to this, as stated by Mr. Moore to Exhibit 2-A to Exhibit 2-Z-327.

Mr. Peyser: On behalf of the M. B. Austin Company I object to it on the ground that said company was not a member of the original Rigid Steel Conduit Association at that time or at any time.

Mr. Tucker: On behalf of the Laclede Steel Company and the Laclede Tube Company I object on the grounds given in the other objection and also upon the ground that neither company was a member of the Association at that time.

Mr. McDaniel: I make the same objection for Spang Chalfant as the one just stated.

Trial Examiner Norwood: Now, these objections are mainly based upon the absence of connection of some of the respondents with the activities of other of the respondents, for one reason. Then another reason appears here from these objections on account of the time, that is, the time element there. It just happens prior to any connections that might be shown. Now, in either case they
54 would be admissible for some purposes. You can show what happened prior to the time covered by the document or covered even by the complaint, if it contains any information that would throw light on subsequent activities, or if it happened prior to one respondent's joining the Association and—it would be an indication of what the ac-

tivities of the Association were at the time the particular respondent joined it. Now, as to the connection there with the activities of other respondents, if this is received at all, it is received subject to a showing that there was that connection, that is, it was with respect to the National Electrical Wholesalers. If he doesn't show any connection between them and the activities of the other, why, the consideration of this particular evidence of the Rigid Steel Conduit Association could not be applied, of course, to the National Electric Wholesalers, and with that understanding it is not to be applied unless connected.

Mr. MacIntyre: If your Honor please, when you say "connected" you mean on the basis of the entire record when the case is closed?

Trial Examiner Norwood: That is right; yes.

Mr. Austin: As I understand that to be the fact, I don't like to delay the proceedings by objecting to this evidence on each occasion, and, therefore, with that in the record I will not do so. It seems to me, however, that there must be some very definite and plain connection.
55 I am not entirely in accord with this basis of the entire record business. I would like to have it pointed out to me where my clients are brought into this alleged conspiracy.

Trial Examiner Norwood: They make that plain, of course. I have overruled the objection and given every respondent the benefit of an exception. But as to the relevancy, I shall have to examine the papers.

Mr. Stewart: I will lend you my copy to look at.

Trial Examiner Norwood: I overruled the objection on the grounds stated. I haven't decided—off the record.

(Discussion off the record.)

Trial Examiner Norwood: The objection as to relevancy is also overruled. Counsel for the respondents have their exceptions. The exhibit is received at large as Commission's Exhibit 3-A and 3-B.

COMMISSIONS EXHIBITS NOS. 3-A and B, were offered and received in evidence.

Mr. Stewart: Mr. Examiner, counsel for the Commission has presented me with three documents, Commission's Exhibits 11-A to 11-L, 12-A to 12-C, and 13-A to 13-C,
56 which on their faces purport to be copies of the minutes of the Rigid Steel Conduit Association and the directors thereof, Exhibits 12-A and 13-A being the di-

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rectors' minutes. I am satisfied that they are true and correct copies of the minutes of those meetings and, so far as I am concerned, I will concede their correctness.

Mr. Poskanzer: What proceedings do they cover?

Mr. Stewart: Of January 27, 1936, Conduit Association.

Mr. Robison: That is what number, 11-A?

Mr. Stewart: Yes; 11-A. 12-A is the board of directors, February 23, 1937. 1 3-A is board of directors, March 9, 1937.

Mr. Robison: What is the date of the first one, please?

Mr. Stewart: January 27, 1937.

Mr. Poskanzer: '37 to '36?

Mr. Stewart: January 27, 1937.

Mr. Poskanzer: Are they being offered?

Mr. Stewart: I understand.

Trial Examiner Norwood: Are they offered?

Mr. MacIntyre: Not yet.

57 (The documents referred to were marked as "Commission's Exhibits 34-A to Z-2, inclusive, 35-A to E, inclusive, 36-A to I, inclusive, 37-A to E, inclusive, and 38-A to C, inclusive", for identification.)

Trial Examiner Norwood: Hearing come to order.

Mr. Austin: With reference to—

Trial Examiner Norwood: This is for the record?

Mr. Austin: Yes, sir.

Trial Examiner Norwood: Go ahead.

Mr. Austin: Commission's Exhibit 17-A to D, I make the same statement with reference to this exhibit as I did to Commission's Exhibits 11, 12, 13.

Mr. MacIntyre: Concerning its identification and authenticity?

Mr. Austin: Well, whatever it is. Whatever I said.

Mr. Tucker: May we have the date of that, if your Honor please?

Mr. Austin: May 11, '37.

Mr. MacIntyre: Now, for the record, referring to Commission's Exhibit 3-A and 3-B which has been received in evidence, Mr. Poskanzer, the certification of the authenticity on the reverse side of that is yours, is it,—

58 Mr. Poskanzer: Yes, sir.

Mr. MacIntyre: As you have certified that?

Mr. Poskanzer: Of course, the record will probably show too, if that is in evidence, that is a carbon copy of which that is a photostat in our files and Cohoes Rolling

Mill Company was not at the meeting at which those minutes are a record.

Trial Examiner Norwood: Yes.

Mr. MacIntyre: Now, if your Honor please, I offer in evidence Commission's Exhibits 11-A to L, inclusive, 12-A to C, inclusive, 13-A to C, inclusive, and 17-A to D, inclusive, as minutes of the Rigid Steel Conduit Association meetings and of meetings of the directors thereof, as is shown by the face of them. They are the minutes that we have just heard Mr. Stewart make some statements concerning the authenticity.

Mr. Houston: If your Honor please, I object in behalf of National Electric to the admission of these in evidence. These are minutes of an association to which a name is signed. The secretary apparently took these minutes down and they are his minutes. It seems to me it is imposing no burden on Mr. MacIntyre to call this gentleman who also, I believe, is a respondent in this case, and ask him whether these are true copies of the minutes. It seems to me that is the obvious and fair way to prove
59 it. I refer to the fact that one of these minutes contains a long statement purporting to be a statement of I. A. Bennett, one of the respondents. I have no means of ascertaining whether this statement is accurate. It is quoting him verbatim in part, and it seems to me the only fair way to prove these mintes is to call the gentleman; he is available and can be called. Object.

Mr. MacIntyre: If your Honor please, an investigator of the Federal Trade Commission happens to have secured these very minutes from the said I. A. Bennett. He furnished them to the investigator, and I don't think he would have furnished them anything that is untrue.

Trial Examiner Norwood: Gentlemen, I think it is solely a matter of inference. It may be more satisfactory to get the secretary here, but counsel has admitted what they purport to be and it is not fatal to it as evidence that the secretary was not called. As I understand it, they come under the terms of that stipulation; do they not?

Mr. Stewart: No, they do not.

Mr. Robison: They do not come under the terms of the formal stipulation.

Trial Examiner Norwood: They come under the terms of counsel's statement here?

Mr. Stewart: That is right.

Mr. Robison: Mr. Examiner, I object to the admission of these documents in evidence so far as Youngstown Sheet & Tube Company is concerned. It is not a member of the Association; had nothing to do with it at all, and the Association had nothing to do with Youngstown.

Mr. Peyser: Mr. Examiner, I make the same objection on behalf of the M. B. Austin Company and insofar as the Triangle Company is concerned I object to them as incompetent, irrelevant and immaterial.

Mr. Tucker: Same objection is made with reference to Laclede Steel Company.

Mr. Swope: I object on behalf of the General Electric Supply Corporation which is not and never was a member of the Association.

Mr. Taylor: If your Honor please, I wish to register the same objection on behalf of Westinghouse Electric Supply Company, which was never a member of the Association. It occurs to me, from the point of view of trying to expedite the hearing, that it might be well to make a blanket objection upon the record with reference to parties that are not members of the Association concerning the bearing of such evidence on their position in this matter, on the theory that those respondents here who were not at any time a member of the Association should not be bound by any evidence introduced with reference either to the organization, the internal activities or the dissolution of the Rigid Steel Conduit Association.

Trial Examiner Norwood: My statement when the previous exhibits were received there would cover this case too, that all of these with respect to any particular respondent or group of respondents are admitted subject to connection, connection up with the activities with which they are the evidence, and also, counsel having objected and given his grounds to this particular evidence, I think we may consider that every respondent—that any respondent may have—may be understood to object to similar testimony where the same reasons apply. So we needn't continue. You get an objection to the entire line.

Mr. Taylor: In view of Mr. MacIntyre's response to your statement, previous statement, I wonder if you would be willing to limit him to specify the connection with reference to respondents not members of the Association; there must be a specific connection with the Rigid Steel

Conduit Association rather than some loose connection up with somebody who some way—or who may became some way implicated.

Trial Examiner Norwood: I think the connection must be substantial either with the Association or with the activities of the Association. I shall have to examine that for relevancy.

Mr. MacIntyre: Are the objections all stated?

Mr. Stewart: No. I should like to make this inquiry as to what your purposes in offering, for example,
62 other than the fact that it is a minute of what took place of the meeting, the statements in these minutes. For example, Mr. Bennett makes a long dissertation on the policy of his company, and so on, with reference to his observance of the law, and so on, and so forth. Now, I take it when the minute is offered as a minute of the meeting it is simply that that is what Mr. Bennett said at the meeting and no more, and by objecting we don't admit that other than that is what Mr. Bennett said because really this is hearsay if you get outside of the bounds of its being a minute of what took place at the meeting and regard it as a recital of facts.

Trial Examiner Norwood: I think he is offering it to show what actually took place at the meeting.

Mr. Stewart: Well, if it is restricted to that, I see no further objection to those that are already made, but if it is to be taken as an admission by our failure to object that what Mr. Bennett said is correct, that is another matter.

Trial Examiner Norwood: Well, counsel objected to that and I gave you an exception in case there is an attempt made to use it for that purpose. I will overrule the objection and receive the exhibits.

COMMISSION'S EXHIBITS NOS. 11-A to L, inclusive, 12-A to C, inclusive, 13-A to C, inclusive, and 17-A to D,
63 inclusive, were offered and received in evidence.

Mr. MacIntyre: If your Honor please, I want to make it clear that these are being offered for everything they are worth, including admissions of respondents as made at these meetings and with all benefit that we can get from any admissions made by any of the respondents who thus attended or who were purported to have made those statements by those in attendance at those meetings.

Mr. Stewart: Well, then, there will have to be different

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objections, then, if that is the purpose of it, because it is obviously hearsay in it. It is what Mr. Booth or Mr. Bennett or whoever was the secretary thought Mr. Walker said, and we won't have the opportunity of examining Mr. Bennett as a speaker, if that is what he said or what he meant, and I certainly want to object to them on the ground that the hearsay in them is not admissible.

Mr. MacIntyre: As I say, I offer them as records of the Association and for admissions of the respondents both and for all we can get out of either of those offers.

Mr. Peyser: Mr. Examiner, under Rule 17 I understood and I take it for granted that you will rule on those portions of these minutes which are irrelevant and are stated by Mr. Stewart. Anything in there that is an opinion by Mr. Bennett is not material here and not binding on any of the respondents, and any such evidence should be
64 excluded if your Honor should rule on it.

Mr. Stewart: If you have the minutes of January 27, 1937, before you I think you will see what I mean, the long statement there by Mr. Bennett. It is obviously self serving and certainly not binding on anybody else.

Trial Examiner Norwood: Theese things are all received subject to connection, see. Some statements made by any one person at a meeting afterwards connected up by evidence that the industry acted on would be relevant and material, I agree. They appear to me relevant, and I shall overrule the objection and receive them subject to these connections and for all applications which they logically and justly may be made.

Mr. Tucker: If your Honor please, so far as Laclede Steel Company is concerned, we object to a statement of hearsay contained in those minutes as to proof of the facts stated in the hearsay.

Trial Examiner Norwood: If it is one of the respondents, you wouldn't object to that being evidence of the truth of the statement, if respondent made it?

Mr. Tucker: No.

Trial Examiner Norwood: If he is one of the respondents.

Mr. Tucker: It is a statement made by another respondent.

65 Trial Examiner Norwood: It would be an admission of one respondent, and then it is subject to being connected up with the Association with other respondents. I can't see that there is any objection to that.

Mr. Tucker: That was my objection.

Trial Examiner Norwood: I overrule the objection. Give the counsel the benefit of the exception.

Mr. Moore: Isn't there a further objection that it is merely an interpretation of the secretary who wrote the minutes of what was said by the particular individual?

Trial Examiner Norwood: No. This is evidence of what was said; some evidence of what was said.

Mr. Moore: Some evidence.

Trial Examiner Norwood: Yes. That is the only way we can get at this. Was that 11-A to 11-L only?

The Reporter: Yes.

Trial Examiner Norwood: This 12, 13 and 17, have you offered those yet?

Mr. MacIntyre: All four of those were offered at one time. They are in a pending offer, 11, 12, 13, 17.

Trial Examiner Norwood: The objection is overruled and those mentioned here, 11-A to L, 12-A to C, 13-A to C, and 17-A to D, are received in evidence and the respondents have their several exceptions.

66 Mr. MacIntyre: If your Honor please, I now offer into evidence Commission's Exhibit for identification 4-A to 4-C, inclusive, as the minutes of a meeting of the Rigid Steel Conduit Association of April 4, 1935. I will now ask Mr. Poskanzer if that is his certification as to the authenticity of them which appears on the reverse side of each of these sheets.

Mr. Poskanzer: Yes. Those are certified as having come from the files of the Cohose Rolling Mill Company.

Mr. McIntyre: Those are offered, if your Honor please.

Trial Examiner Norwood: What numbers are they?

Mr. MacIntyre: 4-A to C.

Trial Examiner Norwood: What have you done with 3-A and B here?

Mr. MacIntyre: That was received.

Mr. Stewart: I make the same statement with reference to Exhibit 4-A to C as I did as to the former exhibits.

Trial Examiner Norwood: Yes; as to 11-A to L, and so forth?

Mr. Stewart: Yes.

Trial Examiner Norwood: Off the record.

Mr. MacIntyre: Are all objections stated to 4-A to C?

Mr. Swope: The same objection as before.

67 Mr. Peyser: Some objections as before on behalf of Triangle and M. B. Austin.

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Trial Examiner Norwood: Received in evidence as 4-A to C.

COMMISSION'S EXHIBITS NOS. 4-A to C, inclusive, were offered and received in evidence.

Mr. Moore: That, Mr. Examiner, I take it means received in evidence on the same basis as the preceding exhibits?

Trial Examiner Norwood: Yes; subject to connection with respect to any respondents against whom it is considered.

Mr. MacIntyre: If your Honor please, I am now referring to Commission's Exhibits for identification 9-A to E, inclusive, 10-A to E, inclusive, 14-A to E, inclusive, 15-A to F, inclusive, 16-A to D, inclusive, and 30—

Trial Examiner Norwood: D?

Mr. MacIntyre: A to D; and 34-A to Z-2, and will ask Mr. Welch if those are minutes of meetings of the Rigid Steel Conduit Association which he has certified as authentic?

Mr. Welch: That is correct.

Mr. MacIntyre: If your Honor please, I offer all of those minutes into evidence at this time.

Mr. Stewart: I don't mean to repudiate anything Mr. Welch stated, but I don't see how he can make that concession because he wasn't connected with the Association.

Mr. Blake, his client, was present for a while, but—

68 Mr. MacIntyre: It so happens that those minutes of meetings cover a period of time when the client of Mr. Welch, attorney Herbert S. Blake, was advising and, in fact, presiding over meetings of the Association, as these minutes will show, and that he, Mr. Welch, and Mr. Blake came to my office, read the minutes and marked their certification on them and he has just confirmed that.

69 Mr. Stewart: As to Commission's Exhibit 34-A to Z-2, I should like to have an offer from counsel for the Commission as to what he proposes to prove by the portion of the minutes which include the specifications of the Commonwealth of Pennsylvania on conduit, consisting of about 22 pages.

Mr. MacIntyre: If Your Honor please, the portion of that exhibit that deals with that problem, of course, is not all that is shown to have taken place at the meeting of the respondents. They handled many other problems at that time, and it is a part of the record of proceedings of

these respondents showing the acts that they participated in, their plans for the handling and the controlling of the industry, and it is for that purpose that that part of the minutes of that particular meeting are offered.

Mr. Stewart: Well, I submit that this is utterly irrelevant and immaterial for the reason that the minutes shows on its face that all it purports to be is a report from the engineer of the Association covering the Commonwealth of Pennsylvania specification for conduit. Now, how that could be material in this case without any further proof is beyond me, and I submit that at the present
70 stage at least, and in view of the fact that it is a specification of a sovereign State with reference to conduit, that it is unnecessarily encumbering the record and totally irrelevant and immaterial.

Trial Examiner Norwood: Well, might it not bear on some sort of collective activities to bring about uniform specifications, or something like that?

Mr. Stewart: Well, but you see it shows on its face—I am not saying what might be proved, I am talking about the paper in its present state.

All it shows is that the Commonwealth of Pennsylvania made this specification for its conduit, and I am objecting to it in the present shape of the record.

Now, if Mr. MacIntyre offers to prove later on that there was some collective activity with reference to this specification by the Commonwealth of Pennsylvania, that is another matter, but he has not made that offer, as I understand it.

Mr. MacIntyre: These minutes, if Your Honor please, show that there was collective activity on the part of these respondents concerning that particular specification on the part of the State of Pennsylvania.

Mr. Stewart: Well, then, it is just a question of reading the English here. The minutes show this—

Mr. MacIntyre: I object to reading the minutes.

Mr. Stewart: Well, I am making an objection.

71 Trial Examiner Norwood: He is making an objection.

Mr. Stewart: And I take it I can argue to the Examiner, and I have to tell him what is in it.

Trial Examiner Norwood: Yes. Go ahead.

Mr. Stewart: The minute shows that the secretary of the meeting read a report from Mr. Denton covering these

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specifications; then Mr. Denton stated in his report that this specification now follows closely the detailed requirements of federal specification so and so, bringing it in conformity with the industry standard for standard rigid conduit, finished. Now, that is all it shows. Now, that is just absolutely all that was done. It is just a report, and it is incorporated in the minutes. They did nothing with regard to it, and there are 23 typewritten pages.

Trial Examiner Norwood: I shall examine it.

(Mr. Stewart hands the document to the Trial Examiner.)

Trial Examiner Norwood: I shall reserve the ruling on this until tomorrow, until I get a chance to read it over; that is Commission's Exhibit 34-A to Z-2.

The ruling is reserved on that.

Now, as to the others?

Mr. Stewart: Now, with reference to the same minutes and to a portion of the minutes which refer to a statement by Mr. Garland, as to what he was told with re-
72 gard to the warehouse situation, I object to that on the ground that it is hearsay, and I should like to point out to the Examiner that the point of this objection is that what it really does is to deprive us of the right of cross-examination if this minute goes in as proof of that fact. If it is simply proof that Mr. Garland said that, that is another matter.

Trial Examiner Norwood: Now, this Mr. Garland is one of the respondents?

Mr. Stewart: Yes, sir.

Trial Examiner Norwood: Also one of these respondents?

Mr. Stewart: Yes, sir. Excuse me.

Trial Examiner Norwood: He will be available to you if you want to bring him up and contradict anything that is in there.

Mr. Poskanzer: If Your Honor please, in addition to the general objection, I wish to object to the Commission's Exhibit 34-A to Z-2 on behalf of the Cohoes Rolling Mill Company, on the ground that from and after August 1, 1938, the Cohoes Rolling Mill Company was not a member of the Association, and that none of its actions were binding on it.

Mr. Moore: Mr. Examiner, I object to the admission in evidence of all these exhibits last offered, in so far as

Youngstown is concerned, because it was not a member of the Association at any time when those meetings were
73 held; and it is entirely immaterial and incompetent as far as Youngstown is concerned.

Mr. Peyser: I wish to make the same objection with respect to M. B. Austin Company and the Triangle of Delaware.

Mr. Tucker: I wish to make the same objection with respect to the Laclede Steel Company.

Trial Examiner Norwood: I am reserving the ruling on that until tomorrow.

Your objection was confined to this, was it not?

Mr. Moore: You understand, Mr. Examiner, my objection applies to Commission's Exhibits 9-A to E and 10, 14, 15, and 16.

Mr. Peyser: As does mine, and Commission's Exhibit 34.

Mr. Moore: And Commission's Exhibit 34, also.

Mr. Tucker: Also for the Laclede Steel Company.

Trial Examiner Norwood: Well, what have you to say to Exhibits 9, 10, 14, 15, and 16? Do your remarks apply to all of those?

Mr. Stewart: No, sir. I was directing my attention specifically to Commission's Exhibit 34-A to Z-2.

Trial Examiner Norwood: Well, as to the objection of those others made to the relevancy—I will reserve the ruling on all of these until tomorrow.

Mr. McDaniel: Spang Chalfant was never a mem-
74 ber of the Association, but I am not making objections to each one of these offers of minutes because I understand that they are taken subject to connection.

Trial Examiner Norwood: That is correct, absolutely.

Mr. King: To save time also, Mr. Examiner, Clayton Mark was not a member of the Association after a certain period when I have a general objection running to all these minutes. I object to them after the date that Clayton Mark—

Trial Examiner Norwood: Yes, counsel may have an objection.

Mr. Stewart: I am just wondering whether we could not help the Examiner. I have checked the minutes, and I have a memo as to when these various companies were members and when they resigned. I wonder if we could not help you if we stipulate as to that. I do not have it

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with me at the moment. Do you have that, Mr. MacIntyre?

Mr. MacIntyre: I have checked all these minutes with that point in view. I find that while some of the respondent corporations claimed that they were not members of the Association as of the particular date, they were nevertheless participating in its activities, and further these comments and these minutes go in a substantial part to prove that point.

Mr. King: Now, you contend that, Mr. MacIntyre,
75 you made that as a statement, as I understand.

Mr. MacIntyre: That is contended, and these minutes are offered as partial proof in support of that contention.

Mr. Tucker: Of course, if Your Honor please, that is not admitted by the respondents.

Mr. MacIntyre: I am now making reference to Commission's Exhibit, for identification, 21-A to D, inclusive, minutes of meetings of the board of directors of the Rigid Steel Conduit Association, September 13, 1937.

Commission's Exhibit 22-A to F, inclusive, minutes of meetings of the Rigid Steel Conduit Association, of September 22, 1937.

Commission's Exhibit 23-A to H, inclusive, minutes of a meeting of the Rigid Steel Conduit Association, October 12, 1937.

Commission's Exhibit 24-A to Z-3, inclusive, minutes of meetings of the Rigid Steel Conduit Association and adjournment thereof of November 12, 18, December 2, and December 7, 1937, and January 20, 1938.

Commission's Exhibit 25-A to 25-F, inclusive, min-
76 utes of a meeting of Rigid Steel Conduit Association board of directors, January 11, 1938.

Commission's Exhibit 26-A to 26-D, inclusive, minutes of a meeting of Rigid Steel Conduit Association board of directors, February 8, 1938.

Commission's Exhibit 27-A to 27-H, inclusive, minutes of a meeting of Rigid Steel Conduit Association board of directors, February 15, 1938.

Commission's Exhibit 28-A to 28-I, inclusive, minutes of meeting of Rigid Steel Conduit Association, February 24, 1938.

Commission's Exhibit 29-A to 29-E, inclusive, minutes of meeting of Rigid Steel Conduit Association, board of directors, March 21, 1938.

Commission's Exhibit 30-A to Q, inclusive, minutes of meeting of Rigid Steel Conduit Association, March 22 1938.

Commission's Exhibit 31-A to G, inclusive, minutes of a meeting of Rigid Steel Conduit Association, April 13, 1938.

Commission's Exhibit 32-A to F, inclusive, minutes of a meeting of Rigid Steel Conduit Association board of directors, April 13, 1938.

Commission's Exhibit 33-A to K, inclusive, minutes of meeting of Rigid Steel Conduit Association, May 12, 1938.

77 Commission's Exhibit 18-A to K, inclusive, minutes of a meeting of Rigid Steel Conduit Association board of directors, June 7, 1937.

Commission's Exhibit 19-A to 19-G, minutes of a meeting of Rigid Steel Conduit Association, June 8, 1937.

Commission's Exhibit 20-A to 20-K, inclusive, minutes of meeting of Rigid Steel Conduit Association, July 13, 1937.

Now, Mr. Welch, as to all of those, I ask you whether or not you have certified pursuant to our stipulation of May 18, as amended July 30, 1941, that all of those are genuine, authentic as minutes of meetings of the Rigid Steel Conduit Association?

Mr. Welch: These were taken from the files of Mr. Booth, who was secretary of the Rigid Steel Conduit Association, and he told me these are authentic copies of the minutes of the Association, and, therefore, I have certified them to be correct.

Mr. MacIntyre: If Your Honor please, I offer these into the record at this time as records of these respondents and as admissions made by them, and it is evidence of their collective action over matters charged in the complaint.

Mr. Peyser: Mr. Examiner, I would like to have an opportunity to read those minutes before making any objections to them. May we have a recess for that purpose?

78 Trial Examiner Norwood: Yes.

Mr. MacIntyre: If Your Honor please, if we are to study or to permit counsel for the respondents to study with as much detail these minutes as we did the last ones, then—that is, before making objections—then I suggest

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that we submit those to them for their study for objections for tomorrow morning. It will probably take some time for them to make some detailed study.

Trial Examiner Norwood: Let the counsel complete his proffer there, and then counsel for the respondents may have them overnight to study in connection with their objections.

Do you have duplicates of those?

Mr. MacIntyre: I do not.

Mr. Stewart: I have.

Trial Examiner Norwood: Mr. Stewart has duplicates of them, and, of course, objections could be made on the basis of a study made tonight by him and his associates, co-counsel.

I imagine that you are going to make some objections based on relevancy, and probably I had better take that bunch of exhibits, so that my ruling may not be delayed, so if you have copies for counsel for respondents, why, you can use those overnight and I will keep these.

Mr. Stewart: You are going to run into the problem of specifications.

79 Trial Examiner Norwood: Counsel may have until tomorrow to make objections to this last proffer.

Mr. Stewart: Fine.

Trial Examiner Norwood: You will see that they are available to the other side.

Mr. Stewart: Oh, yes.

Mr. MacIntyre: If Your Honor please, I now make reference to Commission's Exhibit, for identification, 39-A to E, inclusive, and offer it as a report of the Conduit Committee of the National Electric Wholesalers Association, and minutes of meetings of that committee of that Association in joint conclave with representatives of respondents whose names appear therein of September 28, 1936.

I believe that Mr. Austin can now and will now admit that he has pursuant to our stipulation of May 28, as amended July 30, 1941, certified as to the authenticity and the correctness of this as being the reports, purporting to show what they do show.

80 Mr. Austin: If Your Honor please, those are duly certified by me as authentic copies of reports of not the Conduit Committee but Conduit Committees, running over a period of years, which Mr. MacIntyre, I assume,

will put in the record, semi-annual meetings of the Association.

Mr. MacIntyre: I offer these at this time, if Your Honor please.

Mr. Stewart: Well, now, for myself at least, I shall have to reserve the right to object because I do not know what these are. I have never seen them; some of them I have, some of them I have not.

Mr. MacIntyre: I would like to have the following exhibits marked for identification as Commission's exhibits; Commission's Exhibits Nos. 40-A to D, Commission's Exhibit 41-A and B, Commission's Exhibit 42, Commission's Exhibit 43.

(The documents were marked for identification Commission's Exhibits Nos. 40-A, 40-B, 40-C, 40-D, 41-A, 41-B, 42, and 43.)

81 Mr. MacIntyre: If Your Honor please, I now make reference to Commission's Exhibit, for identification, 40-A to D, inclusive, report of the Conduit Committee of the National Electric Wholesalers Association and minutes of their meeting of May 4, 1936, and May 22, 1939; Commission's Exhibit, for identification, 41-A and B, report of the Conduit Committee of the National Electric Wholesalers Association and minutes of its joint meeting with respondents or representatives of respondents who are conduit manufacturers, of October 17, 1939; Commission's Exhibit 42, report of the Conduit Committee of the National Electric Wholesalers Association and minutes of its joint meeting with a number of respondent conduit manufacturers of May 20, 1940.

I ask Mr. Austin if those are documents which he has certified as authentic and true records of the meetings which they purport to be?

Mr. Austin: Those are certifications of—I would prefer to have them called reports of the Conduit Committee, rather than minutes of the meetings, if you don't mind.

82 Mr. MacIntyre: Well, they are reports and records of meetings as well.

Mr. Austin: They are the reports of conduit committees, semi-annual reports.

Mr. MacIntyre: And you have already certified as to the authenticity and the correctness.

If Your Honor please, I now offer these into evidence as records and admissions of activities of these respondents.

Trial Examiner Norwood: Is there any objection?

Mr. Stewart: Well, I take it that they are only offered for identification for the moment, so that we may have a chance to examine them, along with the others.

Mr. MacIntyre: They are offered for the record now

Mr. Stewart: I would like, then, to have the right to examine them.

Mr. Tucker: I thought, if Your Honor please, that the suggestion made with reference to that batch of minutes offered a while ago would apply as well to these, which we have no opportunity to examine, and to which objections could be made in the morning.

Trial Examiner Norwood: I think so.

Do you have copies of those so that I may keep the original?

83 Mr. Austin: If Your Honor please, I would like to make the same comment with respect to Commission's Exhibit No. 39-A to E, that that also consists of reports of conduit committees and not minutes of meetings.

Mr. Stewart: Well, as I understand it, Mr. Examiner, I made this suggestion a moment ago in the conversation we had, whatever characterization is given a document by counsel, either for the Commission or respondents, is of no moment; the document may speak for itself.

Trial Examiner Norwood: That is correct. Counsel is correct.

Now, I have Commission's Exhibits 41 and 40. Have you a copy of Commission's Exhibit 39-A to E?

Mr. Stewart: Commission's Exhibit 42 is the one we do not seem to have.

Trial Examiner Norwood: How about that Commission's Exhibit No. 42?

Mr. MacIntyre: Mr. Stewart is now studying that.

Mr. Stewart: The trouble is we will all have to study it. I cannot speak for everybody.

Trial Examiner Norwood: I think I will rule on that. It is just one document.

Make your objection now.

Mr. MacIntyre: If Your Honor please, there is one thing I want to comment upon.

84 Mr. Stewart, of course, just made reference to comments concerning the characterization of documents as made by respondents' counsel. I judge, of course, in

so far as admissions are made concerning the authenticity or the nature or the correctness of any of these records by respondents' counsel here in this hearing room, will be taken, of course, to bind the respondents, because that is one thing we are attempting to do, is to make a record concerning these documents.

Of course, the document itself will have to stand, but I am talking about statements made affecting the status of the document.

Mr. Stewart: I thought I made myself clear, Mr. Examiner. All I was talking about, if my friend said it was a joint conclave, or something, it had no bearing on what the document said.

Trial Examiner Norwood: That is true.

Mr. Stewart: And the same thing—

Trial Examiner Norwood: That goes for all papers. If they call a paper something that it is not—

Mr. Stewart: I do not say it is not.

Trial Examiner Norwood: If the paper shows it is not, then the statement is not worth very much.

Mr. Moore: Well, I would like to have the record show, so far as our client is concerned, the paper is what it
85 is. If it is an admission, it is an admission, and it can be refuted, and anything stated here means nothing except as it is stated in the paper.

Mr. Stewart: That is what I was trying to say.

Trial Examiner Norwood: I think counsel's statement covers the case perfectly there. There is no misunderstanding about it.

Mr. Stewart: Mr. Examiner, if you will look at this document you will see how impossible it is to formulate all objections at once in view of the number of counsel. You will see the possible objections. You may not see them all, but you can see it is obviously objectionable in several respects.

Trial Examiner Norwood: I think that the counsel should be able to read that page and state his objections to it now inasmuch as we have not extra copies here.

Mr. Stewart: Do you mean to pass it around after I state mine?

Trial Examiner Norwood: Let us dispose of that paper now. We have enough to study tonight.

Mr. Austin: If Your Honor please, for the record, as counsel for the Electric Wholesalers Association and all

of the other clients for whom I appear, I would like to note an objection to Commission's Exhibit 39-A to E, Commission's Exhibit 40-A to D, Commission's Exhibit
86 41-A and B, and Commission's Exhibit 42, as entirely incompetent as evidence in this proceeding.

87 Mr. Stewart: On behalf of my clients, Mr. Examiner, I object to this document as hearsay and its admissibility as depriving the respondents of the valuable right of cross-examination, and further as being matters which occurred entirely in connection with the affairs of National Electric Wholesalers Association, in no way affecting any of the matters of the Rigid Steel Conduit Association or the respondents, and also containing matters which are in no way involved in this case because the document shows it has to do with thin wall conduit which is not involved in this case in any event.

Trial Examiner Norwood: Any further objection?

Mr. Tucker: Objected to on behalf of the Laclede Steel Company for the reason that the Laclede Steel Company was not present or shown to be represented or a member of the Rigid Steel Conduit Association or the National Electric Wholesalers Association.

Mr. King: I object to it on that ground and add the remark that that makes it second degree hearsay.

Mr. Moore: I object to it.

Trial Examiner Norwood: You mean hearsay once removed?

Mr. King: Once removed.

Mr. Moore: I object to it on behalf of Youngstown Sheet & Tube Company as being entirely irrelevant, immaterial and incompetent and being nothing but minutes of a
88 meeting held on a specified date but not proof of anything except that, if it is that. It can not bind Youngstown Sheet & Tube Company. Any statements made in it are not evidence insofar as it is concerned.

Trial Examiner Norwood: Well, properly identified would it prove that those statements were made at that meeting, if that happens to be material?

Mr. Moore: Certainly not; doesn't prove anything. It states that Youngstown Sheet & Tube Company was represented but doesn't even prove that. It is hearsay.

Mr. Stewart: May I call your attention, Mr. Examiner to—

Trial Examiner Norwood: I understood that that paper was properly identified as minutes.

Mr. Stewart: No.

Trial Examiner Norwood: Isn't that identified in some way?

Mr. Stewart: The authentication is that it was a document produced from the files of the National Electric Wholesalers Association, that the document is genuine and authentic, but, you see, the difficulty about this document in one respect is that here is a general statement:

"The manufacturers continue to express entire satisfaction with the economies resulting from the discontinuance of their local warehouse expense, and reiterate
89 their liking for wholesaler warehousing as now in operation, thereby eliminating the unnecessary waste of additional expense involved in local warehouse stocks."

Now, you can't tell whether that is the idea of the writer or whether that is what the manufacturers agreed on or what it is.

Trial Examiner Norwood: Who is it making that statement?

Mr. Stewart: I can't tell. It is just signed by L. E. Latham, chairman.

Trial Examiner Norwood: What was he?

Mr. Stewart: He was chairman of the National Electric Wholesalers Conduit Committee.

Trial Examiner Norwood: Would he be available to explain that paper in case he were called?

Mr. Stewart: I can't tell.

Trial Examiner Norwood: He is within your reach. In other words, you have the power to show the whole story in case you wanted to show it. It goes to the fairness of receiving this paper. It goes to the very heart of it.

90 Mr. Welch: Then, in addition to the objections that have already been raised, this is a report of the meeting having taken place at a period subsequent to the period when the Organization Service Group of respondents got out of the Rigid Steel Conduit Association, and I object to it on that ground.

Trial Examiner Norwood: Well, I shall reserve the ruling on this.

Mr. Poskanzer: Your Honor, I object on the ground that the Cohose Rolling Mill Company was not represented

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by anybody at these conferences at any time, was not
91 a party to these conferences and is not bound by anything that happened there or is purported to have happened there.

Mr. Peyser: On behalf of the M. B. Austin Company I repeat the same objection. The name does not appear there. Neither does the name of Triangle Conduit and Cable Company of Delaware; on the further ground that the statements made are not binding and there has been no ground laid for the introduction of evidence.

Mr. McDaniel: On behalf of H. G. Morrow and Spang Chalfant I object to the admission of the document because neither of those parties were present and knew nothing about it.

Trial Examiner Norwood: I will rule on that tomorrow, and I can study this paper in connection with the other papers.

(Commission's Exhibit 44 was thereupon marked for identification.)

Mr. MacIntyre: If your Honor please, I am referring now to Commission's Exhibit for identification 44, as a mailing list to members of the Rigid Steel Conduit Industry and as a list that was in use in May, 1938, by respondents Herbert S. Blake and Robert S. Booth of the respondent, Organization Service Corporation, and respondent Rigid Steel Conduit Association, and I believe that Mr. Welch will now agree that he certified that to
92 be such authentic and correct mailing list pursuant to our stipulation of May 28, 1941, as amended July 30, 1941.

Is that correct, Mr. Welch?

Mr. Welch: On the statement made by Mr. Blake that that is a list he used, I certify that to be correct. Will you please read the certification that was read there?

Mr. MacIntyre: I will be happy to read the entire certification. I have read parts of it.

Mr. Welch: I think you had better.

Mr. MacIntyre: "The undersigned Murray D. Welch as attorney for Organization Service Corporation admits and agrees that the document or record number 534—" I might say off the record—

(Discussion off the record.)

Mr. MacIntyre: —"to which this statement is affixed was produced from the files of and furnished by Organiza-

tion Service Corporation. The undersigned further admits and agrees that the document or record to which this statement is affixed is genuine and authentic mailing list used by Organization Service Corporation in mailing material to members of the Rigid Steel Conduit Industry. This list was in use in May, 1938. Signed Murray D. Welch."

Mr. Welch: I would like to make a statement at the time I made this certification that Mr. Blake said we used advisedly the words "Rigid Steel Conduit Industry,"
93 rather than Rigid Steel Conduit Association."

Mr. MacIntyre: And on the basis of the certifications and admissions as to the authenticity and the genuineness and correctness of this I now offer it in evidence as a record of the collective activity of these respondents and as admissions against their interest.

Mr. Swope: I object to the characterization of that by counsel.

Mr. Austin: If your Honor please, I think this is a good point for me to get in that objection about the wholesalers, nothing to do with us.

Trial Examiner Norwood: I think we covered that.

Mr. Tucker: Your Honor, I would like to make an objection. If it is to be admitted on the ground that it is an admission against interest, I don't think that it is an admission against interest to admit or for somebody else to admit that you are a member of an industry, and that is the only admission there is.

Trial Examiner Norwood: That depends.

Mr. Stewart: As I understand it, Mr. Examiner, all that it amounts to is that Mr. MacIntyre offers it as a mailing list used by Mr. Blake to whom we sent notices as to Rigid Steel Conduit Industry. Now, as to whether it has any further effect, it seems to me is a matter of argument.

Trial Examiner Norwood: Well, I imagine he is
94 going to connect that up with somebody else.

Mr. Peyser: I object on behalf of M. B. Austin whose name does not appear on the list and Triangle Conduit & Cable Company of Delaware whose name does not appear on it.

Mr. Gilpatric: No objection, your Honor.

Mr. MacIntyre: They won't need to study this over night then.

Mr. King: On behalf of Clayton Mark I object to it as wholly irrelevant, your Honor.

Mr. Stewart: Bell Telephone people have a big list also.

Trial Examiner Norwood: Overrule the objection and receive this subject to connection with any of the individual persons against whom it may be used.

Mr. Poskanzer: I would like to have the record show, if your Honor please, that on the record the names of the companies are typewritten while the names and addresses are written in someone else's handwriting. It doesn't look like a very good mailing list.

Trial Examiner Norwood: This appears to be multigraphed or reproduced mechanically, not typewriting.

Mr. Poskanzer: Some kind of mechanical typewriting. The addresses are all in handwriting.

Trial Examiner Norwood: Yes; that shows on the paper. I will admit it for what it may prove to be worth.

95 COMMISSION'S EXHIBIT NO. 44, was offered and received in evidence.

Trial Examiner Norwood: The hearing will recess until 10 o'clock tomorrow morning.

(Whereupon, at 4:08 o'clock p. m. the hearing was adjourned to Tuesday, September 16, 1941, at 10 o'clock a. m.)

100 Proceedings.

Trial Examiner Norwood: Pursuant to adjournment on yesterday, the hearing in Docket No. 4452 is reconvened at 10 o'clock a. m., September 16, 1941, in Room 332, Office of the Federal Trade Commission, Washington, D. C.

The appearances are the same.

Proceed, gentlemen.

Mr. King: If Your Honor please, I would like the record to show that I complied with your request and filed this morning three copies of a motion with the Secretary's office.

Trial Examiner Norwood: Yes.

Mr. MacIntyre: I believe there are some rulings pending, if your Honor please.

Trial Examiner Norwood: Now, I have not examined all of these. I will do so before the day is over.

I will refer to Commission's Exhibits 39-A to E, 40-A to D, 41-A and B, and 42.

101 Trial Examiner Norwood: Well, just a minute. Commission's Exhibits 9-A to E, 10-A to E, 14-A to E, 15-A to F, and 16-A to D, objections have been stated on those. I have studied those and I shall overrule the objections and receive them in evidence.

COMMISSION'S EXHIBITS NOS. 9-A, TO 9-E, 10-A TO 10-E, 14-A TO 14-E, 15-A TO 15-F, AND 16-A TO 16-D, both inclusive, were offered and received in evidence.

Trial Examiner Norwood: Now, as to Commission's Exhibit No. 34-A to Z-2, the same statement applies as to its application to particular defendants—

Mr. Stewart: Well, Mr. Examiner, may I at this stage raise a question? It seems to me it is important to us, and that includes my friend on the other side, although he probably has more funds at command than we do—as you

102 will recall the portion of Commission's Exhibit 34 that we were complaining about in particular were the specifications for conduit described.

Trial Examiner Norwood: I was just going to take that up.

Mr. Stewart: I am sorry.

Trial Examiner Norwood: I have not ruled on that yet. Commission's Exhibit 16-A to D was the last.

Mr. Stewart: I thought you said Commission's Exhibit 34.

Trial Examiner Norwood: As to Commission's Exhibit No. 34, I am inclined to agree with you about the doubtfulness of the relevancy of this long engineer's report. I would like to hear from Mr. MacIntyre about that. Unless it is useful, it is a long document and is going to extend the record if it has to be printed, and unless it is useful and unless you have not covered the same point in some other way, why—

Mr. Stewart: You understand, there is nothing in the pleading complaining about any combination with reference to specifications.

Trial Examiner Norwood: Go ahead. Let us hear from you, Mr. MacIntyre.

Mr. MacIntyre: Of course, we did not include in the pleadings specifications of each and every act that was

103 done to restrain trade, but we feel this way, that anything in those minutes which requires collective action

on the part of these respondents, or, for that matter, anything that they did or said at the meeting, of which this is a record, in the way of a collective action, that touches their activities which are in question and in issue here, is properly a part of the evidence in this record.

Now, if there is considerable question at this time about that one letter that is incorporated into the minutes, the one from the engineer of the Commonwealth of Pennsylvania, I can say this, that I will withdraw the offer of it from the minutes, but renew the offer of all of the minutes except as to that letter at this time. I do not want any separation to take place as to the pages because otherwise we cannot determine what the other minutes might be referring to if it is separated; but I will modify my offer to include those minutes, Commission's Exhibit 34-A to Z-2, except for the letter of the engineer of the State of Pennsylvania, with the understanding that it will not be separated from the minutes at this time. If the case should go up on appeal, of course if it is not in evidence by that time it would naturally not be certified as a part of the record to the courts.

Trial Examiner Norwood: Well, I shall overrule the objection and receive in evidence Commission's Exhibit,
for identification, 34-A, B, and C, and the last para-
104 graph on the sheet marked Commission's Exhibit 34-Y
and 34-Z, and 34-Z-1 and 34-Z-2, eliminating the engineer's report that has been discussed.

Now, that is still marked for identification, and if it becomes relevant at any time later I will consider receiving it.

COMMISSION'S EXHIBIT NO. 34-A, 34-B, 34-C, 34-Y, 34-Z, 34-Z-1, 34-Z-2, were offered and received in evidence.

Mr. MacIntyre: All of the pages beginning with the last paragraph on Y are received; is that correct?

Trial Examiner Norwood: Yes; beginning with the last paragraph—

Mr. MacIntyre: Everything subsequent to the last—

Trial Examiner Norwood: —because it is explanatory of the matter that follows.

Now, I will hear from the counsel.

Mr. Stewart: I am wondering whether Mr. MacIntyre would be agreeable to a suggestion. With reference to the minutes as a whole, from my knowledge of them, there is unquestionably a great deal of material in them that hasn't

the slightest bearing on any of the issues here, and I am wondering whether he would care when he offers minutes to designate the portion of the minutes that he is
105 offering. Physically, he can't exclude it in this record, but when it comes to final steps then we will know just what part he is relying on rather than—for example, you will find resolutions about somebody's illness or somebody's death. There is no sense in spending money in printing that material.

Trial Examiner Norwood: I think this: That in similar instances counsel for the respondents have wanted that to go in to show the whole story, and some of the minutes the contention is that it shows a great many lawful and constructive activities here on the part of these trade associations, and some of these have been objected to by Commission's attorneys as not per se lawful evidence that they had not been connected up with activities relating to price and other matters which are unlawful; so I don't see why counsel want to eliminate every bit of that simply because it doesn't bear directly on the complaint; and another thing that I think would be accomplished is it does give the Commission the whole story. These minutes are not very long, and after the Commission has had a chance to complete its entire study then the counsel may agree on what to eliminate when they have the record printed for the court. I am merely suggesting now that counsel may object and then I will overrule it.

Mr. MacIntyre: If your Honor please, I would like—

Trial Examiner Norwood: Will you excuse me just
106 a minute?

(A short interruption occurred.)

Trial Examiner Norwood: I will hear Mr. MacIntyre.

Mr. MacIntyre: If Your Honor please, I would like to make this observation on the record: That I have given consideration to the suggestion which has been made by Mr. Stewart.

Mr. Austin: It is off the record?

Mr. MacIntyre: It is on the record.

Trial Examiner Norwood: Is this off the record or on?

Mr. MacIntyre: On the record.

Trial Examiner Norwood: On the record.

Mr. MacIntyre: And from the limited experience I have had I have decided that it would be impractical to attempt to segregate for exclusion a paragraph here or paragraph

there, or even a page here or a page there from these minutes. The record with all of these matters included will actually save time rather than take time, and probably reduce the expense to have the minutes as a whole as they have been offered, even though a paragraph in some instances might possibly be irrelevant.

Mr. Stewart: I guess our friends will feel the same way when we get to our part of the case.

Now, shall we take up the N. E. W. A.?

107 Trial Examiner Norwood: I will hear from the counsel with regard to Commission's proffers from 19 to 42; that is, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 33, then 39, 40, 41, 42. Make that from 18; 18 and 19.

Mr. Gilpatric: Well, Mr. Examiner, addressing myself to that group of exhibits, on behalf of Youngstown Sheet & Tube we object to their introduction in evidence as competent proof on the ground we contend Youngstown was not a member of the Association during this period and is not bound by these proceedings based upon these minutes.

Mr. Peyser: We renew the same objection on behalf of the M. B. Austin Company and Triangle Conduit & Cable Company, a Delaware corporation.

Mr. McDaniel: Make the same objection with regard to Spang Chalfant.

Mr. Tucker: If Your Honor please, in respect to Laclede Steel Company and Laclede Tube Company, the same situation exists with respect to membership during these periods, and I wonder, without the necessity of making these same statements at different times, whether we could have an understanding whenever an objection is made for Youngstown or a motion is made for Youngstown that the benefit of it might apply as well to the Laclede Steel Company and the Laclede Tube Company.

Trial Examiner Norwood: Well, it just isn't clear
108 to me whether that is practical, but I think with the statement that I made with respect to connection to the respondents it has really been unnecessary for them to object in cases like yours. It has to be connected up with you, and if it can be connected—if it is connected with you then your objection is not well founded.

Mr. King: Your Honor Please, I have already made objections to Exhibits 39-A to E on behalf of my client.

Trial Examiner Norwood: Yes.

Mr. King: As to the balance of those exhibits, on behalf of Clayton Mark & Company, we object to their admission on the ground that they are wholly incompetent to prove any of the issues in either count of the complaint. Further object to the exhibits or those of them which relate to count 2 until the Commission rules on our motion to dismiss. We further object to those exhibits or such of them as are pertinent on the ground that Clayton Mark & Company was not a member of the Association.

Trial Examiner Norwood: Any further objections?

Mr. Taylor: If Your Honor please, with regard to Exhibits 39-A, 39-E, I wish to object on behalf of my client, a wholesaler, on the ground that those established, without a further and more specific offer on the part of counsel for the Commission, nothing more than collective activity among the wholesalers. I am not making any
109 admission on this point. Quite obviously from the appearances of record there is a Wholesalers Association which might be construed to presuppose a certain amount of collective activity. It is my understanding in a case of this sort that Mr. MacIntyre will have to go further than he has gone which, in my understanding, is merely a statement that showed collective activity, and show in some respect the collective activity is going to be connected up, that is, in his offer, with something that is complained of here in the complaint; and in the absence of such an offer I don't believe the evidence is competent in any respect.

Trial Examiner Norwood: Well, I studied this exhibit in connection with some of the minutes there of the Rigid Steel Conduit Association. Now,—

Mr. Stewart: As I understand it, we are talking about the N.E.W.A.

Trial Examiner Norwood: You are talking about the N.R.A.

Mr. Stewart: We are talking about the N.E.W.A.

Mr. Robison: Conduit Committee minutes.

Trial Examiner Norwood: Yes, I know.

Now, Mr. MacIntyre can state his contentions again, but I understood that he contended that this tied in with the other matters, with the minutes of the Rigid Steel Conduit Association.

110 Mr. Stewart: No, No. No, no.

Mr. MacIntyre: If Your Honor please, they are

only tied in by degree by what is shown on the face of the minutes of the Rigid Steel Conduit Association, and they will be much tighter tied in when other minutes of that Association are offered this morning. We haven't quite offered for the record all of the minutes of the Rigid Steel Conduit Association and others are on the way in the next few minutes, but I do undertake to offer more evidence from today on showing a connection between the Conduit Committee, and, in fact, all of the officers and committee men and members of the National Electrical Wholesalers Association and the officers and members of the Rigid Steel Conduit Association and other respondents.

Mr. Stewart: Now, Mr. Examiner, might I have the exhibits so that I can state specifically the objection, if you please.

Trial Examiner Norwood: Yes.

Mr. Stewart: Shall I proceed?

Trial Examiner Norwood: Proceed; yes.

Mr. Stewart: As to Exhibit 39-A, it is objected to as to those respondent manufacturers who were not present at the meeting as in no way binding on them, and as to those named who are presently respondents it is objected to as hearsay and being a statement of a series of 111 conclusions and opinions by the Conduit Committee of the National Electric Wholesalers Association. 39-B is objected to on the same grounds. 39-C is objected to as not binding on any of the respondent manufacturers, as not purporting to have been made in connection with any meeting with them, but being simply a purport of a report of the Conduit Committee of the National Electric Wholesalers, and obviously it is hearsay as to any of the respondent manufacturers who are not present and who are not shown to have concurred therein or to have had knowledge thereof. 39-D is objected to for the same reasons, and the same is true as to 39-E. I take it you are familiar with these. I gather you have read them all.

Trial Examiner Norwood: Yes; I studied those.

Mr. Welch: Your Honor, in addition to the reasons that Mr. Stewart has raised, I would like to object to the introduction of these documents into evidence on the ground that it deprives us of the right of cross-examination of the witness who is purported to have made this report. I think that is a violation of our right of due process.

Trial Examiner Norwood: That is on what particular exhibit, 39?

Mr. Welch: On 39-A to E.

Mr. Stewart: May I—excuse me. See, the difficulty we are in is, for example, in Exhibit 39-C. Now, this is a meeting at which only representatives of the Con-
112 duit Committee of the National Electrical Whole-salers Association were present, and obviously a wholly ex parte proceeding on their part. Now, it recites:

"On Wednesday morning, October 20, 1937, we had a further meeting at which several of our manufacturer friends entered into our discussions quite freely. More than ever your committee decided on urging the wholesaler's whole-hearted cooperation in the sales agency plan of selling conduit. Don't abuse the plan by fictitious contracts or amounts of conduit needed. It ought to pay dividends to you in the near future."

Now, obviously we have no way of knowing, except by the production of the man who signed this, or somebody who was present at that meeting, as to just what they talked about.

Trial Examiner Norwood: Who is the man who signed it?

Mr. Stewart: D. L. Fife.

Trial Examiner Norwood: What is he?

Mr. Stewart: I don't know. He is chairman of this committee. That is all I know.

Who was he, Mr. Austin?

Mr. Austin: Mr. Fife was the chairman of that committee at that time.

Trial Examiner Norwood: He was a member of
113 your Association?

Mr. Austin: Yes, sir.

Mr. MacIntyre: He is specifically named as one of the respondents in this case.

Trial Examiner Norwood: Now, I think it makes all the difference in the world in recitals like that—the matter of who has the story in his possession and who can give the remainder of the information. For an outsider who could not be reached it is one thing, but you have the story in your possession. It is another.

Mr. Stewart: You mean the wholesalers?

Trial Examiner Norwood: It is going to the fairness of receiving this.

Mr. Stewart: But I have always understood that one of the very essential and fundamental rights in a hearing is the right of cross-examination, and I am just wondering whether we are not getting dangerously close to a denial of that right by the idea that my friend on the other side need only put something in, and just because the witness happens to be a member of the National Electrical Wholesalers Association, or a manufacturer, that put the burden on us to explain everything.

Now, for example, here is a letter which is quoted in 39-D in which there is quite a recital with regard to the activities of the National Electrical Contractors Asso-
114 ciation, executive committee. Now, that is, of course, getting one step further removed because they are not in this case at all, and this recites that the National Electrical Contractors Association executive committee is going to file complaints with the Federal Trade Commission alleging violations of the Robinson-Patman Act in the matter of discrimination arising out of the contractors' contracts. Now, it is not, surely, up to us to produce those people because they are not respondents. We have no control over them; have no access to them except by subpoena. In fact, we don't know other than just what is in here.

Trial Examiner Norwood: Well, that appears to be on a different basis from the other, but this is evidence of what happened at that meeting. Now, if it is inadmissible or unfair hearsay, it will be disregarded, but in a case of this nature that information should be received for study, and if it is of no value it will be discarded, but this is a study. It is not just the basis for an appeal to a jury. So where it does not appear unfair to anyone the matter should be received if it appears relevant and material and competent.

Mr. Stewart: May I finish?

Trial Examiner Norwood: Yes, finish.

Mr. Stewart: I appreciate that we are not bound by the strict rules of evidence, but what I am troubled about is this, that after all who is going to determine for
115 us in advance when it comes to preparing our defense as to what is to be regarded as material and relevant. We have to assume that everything that goes in is going to have some weight in the absence of any indication that it is of no materiality, and, for example, the matter of

getting the information from the National Electrical Contractors Association would be no small matter for us.

Trial Examiner Norwood: I think the counsel has sufficient wisdom to segregate the important and unimportant.

Mr. Stewart: Unfortunately, we have found, as you no doubt have found, that disagreement between counsel and the trial member of the proceeding—I mean sometimes judges disagree with lawyers.

Trial Examiner Norwood: Oh, yes.

Mr. Gilpatric: Mr. Examiner, I want to make it clear for our part, we do not regard that sort of evidence as the kind of evidence, legally admissible evidence, which would support a finding, and that while Your Honor may take it into account we certainly want the objection as to hearsay to stand right there, and be reckoned with when the question comes to determining what findings the Commission can make based upon this kind of a record.

Trial Examiner Norwood: Well, some of this evidence might have a corroborative value. If there is nothing else on the subject it will probably be discarded.

116 Mr. Austin: If your Honor please, Mr. MacIntyre has made the statement for the record this morning that he has already connected, if this evidence is admitted, the officers and directors and committees of the Electrical Wholesalers Association with the officers and directors of the Rigid Steel Conduit Association. I would like the record to show that these reports make no reference of any kind to the Rigid Steel Conduit Association and, therefore, I believe that the fear that I expressed yesterday of getting connected up on a general picture where there is no fundamental actual connection shown on the basis of an inference or conclusion is very dangerous right this minute, and I think that that is a very good and valid objection to this evidence as proof, and with that I concur with you sir, that you cannot make a finding on the basis of that evidence.

Trial Examiner Norwood: I think probably counsel is correct about that, but I am going to admit it for study so that we can see whether it can be connected.

Mr. MacIntyre: I just wanted to say, if Your Honor please, I am pressing for the reception of these documents as admissions, not only as records of what took place at meetings of these respondents, but as admissions of these respondents, and, of course, once that they are proven as admissions this right of cross-examination vanishes.

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Nothing is better known than that a statement made
117 not under oath but by someone charged, which falls within the purview of admissions, takes away the right of cross-examination on that, and that is clearly shown, of course, by that long line of cases, one of which is *State* v. *Broughton,* 45 American Decisions, 507, in which it was very difficult, apparently, at the time the statement was made by the accused—and that man was fighting for his life—that it was an admission, but nevertheless simply because he falsely accused someone else it was taken in evidence against him.

Those things, of course—admissions are not hearsay, they are not even exceptions to the hearsay rule.

Trial Examiner Norwood: Well, I considered that feature of admissions, of course, but on the basis of these rulings—

Mr. King: I beg your pardon.

Trial Examiner Norwood: Go ahead.

Mr. King: On account of Mr. MacIntyre's recent statement, I would like to add one further objection to all of these documents on behalf of Clayton Mark, and that is that they all completely lack the necessary qualifications to entitle them to admission not only in court but in any administrative body.

Mr. Stewart: Mr. Examiner, I have no quarrel with Mr. MacIntyre's contention with regard to admissions, but I
118 have never understood you can get an admission from somebody ex parte which in no way binds other people, and make that the basis of evidence against the parties who were in no way responsible.

The point I am making is that Mr. MacIntyre is offering these documents against all respondents, not against the ones who made the admissions, but against all of them, which I think, and which I submit, is absolutely irregular.

Trial Examiner Norwood: I think we have made that clear.

I shall overrule the objections and give counsel their exception.

I shall admit Commission's Exhibits 39-A to E, 40-A to D, 41-A and B, and 42.

COMMISSION'S EXHIBITS NOS. 39-A to 39-E, 40-A to 40-D, 41-A, 41-B, and 42, were offered and received in evidence.

Mr. Stewart: Now, may I have the other exhibits so that I won't have to search through mine?

Trial Examiner Norwood: These?

Mr. Stewart: Yes, if you please.

Trial Examiner Norwood: You may take them and state your objections. I have not had a chance to read them.

Mr. Stewart: You have not?

Trial Examiner Norwood: I will defer ruling, but
119 you may state your objections.

Mr. Stewart: Well, if you are to defer the ruling I would defer the objection. There has been too much to go over.

Trial Examiner Norwood: Well, let me keep them. I will have a chance before the day is over to examine them.

Mr. Stewart: Yes. I think you will find among them some technical matters.

Mr. Gilpatric: May we go off the record, please, Mr. Examiner.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: On the record.

Proceed.

Mr. MacIntyre: If Your Honor please, I would like to call at this time as a witness at the instance of the Commission Mr. S. L. Williams.

SAMUEL L. WILLIAMS was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

Q. Mr. Williams, will you please state for the record your full name and occupation.

120 A. Samuel L. Williams, attorney-examiner, Federal Trade Commission.

Q. How long have you been so engaged?

A. Seven and one-half years.

Q. In connection with your work as an attorney-examiner for the Federal Trade Commission, have you undertaken any investigations of activities in the rigid steel conduit industry?

A. Yes, I did.

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Q. Briefly, state the nature and scope of those duties.

A. Well, I called on some of the manufacturers who were members of the Rigid Steel Conduit Association and also on the consulting engineer and some of the members of the National Electrical Wholesalers Association and the Association's secretary itself.

Q. For what purpose did you call on them?

A. Primarily for the purpose of examining the files and the records of minutes of the Association meetings and any other data that they might have pertaining to the method of computing the prices, their methods of sale, and any information they might have in regard to the operation of the Rigid Steel Conduit Association.

Q. In connection with that work, did you call on one Major Lawrence R. Quinn?

A. I did.

Q. Will you state the time and circumstances of 121 that call, as well as you can.

A. Well, that was in June, 1940. I called at Mr. Quinn's office. I spent two days, I think—I am not positive about that,—but I questioned him with regard to the activities of the Association and also with regard to the activities of his own company in connection with it, and requested permission to examine any correspondence he might have with competitors and with the Association, and requested also an examination of such minutes of the Association as he might have, and as I recall it at that time he had been secretary of the—at least the treasury of the Rigid Steel Conduit Association, and was vice-president of the Enameled Metals Company.

Q. And acting in those capacities, did he turn over to you any material which he designated as a compliance with your request for files and papers of the Rigid Steel Conduit Association?

A. He gave me access to all the material I requested, furnished me with minutes of the Association meetings which were in his possession, and correspondence with some competing firms and correspondence with the Association, and bulletins that had been distributed by the Association—that is, by the Rigid Steel Conduit Association.

Q. Mr. Williams, I show you Commission's Exhibit, for identification, 8-A to C, inclusive. I will ask you to state whether you recognize that, and, if so, as what?

122 A. Yes. This was in the group of minutes which he furnished me.

Q. Mr. Quinn furnished you those as minutes of the meetings of the Rigid Steel Conduit Association?

A. He gave me a file which he said contained copies of all the minutes that he had in his possession, and this was in the file, or at least this was photostated from one of the records in his file.

Q. That is, from one of the records that was in the file you just mentioned?

A. Yes, which he said was minutes of the Association.

Q. Mr. Williams, I now show you Commission's Exhibit, for identification, 35-A to E, inclusive, and ask you to state whether or not you recognize that, and, if so, as what?

A. This is also the record of the minutes of a meeting which was in the same file which Mr. Quinn furnished me.

Q. And did he furnish you the document of which that is a photostat as minutes of meeting of the Rigid Steel Conduit Association?

A. Yes, he furnished me the document from which this was photostated.

Q. As minutes of the Rigid Steel Conduit Association?

A. That is right.

Q. Now, Mr. Williams, I show you a document
123 marked for identification as Commission's Exhibit 38-A to C, inclusive, and ask you to state whether or not you recognize that, and, if so, as what?

A. Yes, this was also in the files of the—this was also in the folder which he said—which Mr. Quinn said contained the minutes. The original was photostated and returned to him. This is a photostat copy of it.

Q. That, then, is a photostat of the document which Mr. Quinn stated to you was a record of the minutes of meetings of the Rigid Steel Conduit Association?

A. That is right.

Q. Now, in connection with your work investigating the activities of the Rigid Steel Conduit industry, members of the industry, did you have an occasion to call on a Mr. A. Penn Denton?

A. Yes. I called on him at his office in New York on, I think it was, the 24th of June, 1940.

Q. Where was that office located?

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A. I do not recall the exact address now. It seems to me it was 17 West Forty-second Street.

Q. Is that the offices of the Rigid Steel Conduit Association?

A. That is what he said.

Q. What was the date of that call?

A. I called on him on June 24 and again on the 28th.

124 Q. Of what year?

A. Of 1940. At that time I requested permission to examine the files in his office, and he said the Conduit Association was—that the files were not accessible because he had to get permission from the officers before an examination could be made, but he did allow me to examine what those minutes—those that he had in his possession.

Q. And did you secure any documents from him at that time?

A. I did not secure any on that date. I merely made a record of those documents that I examined, and I wired Mr. Quinn, whom he said had possession, or at least control of the records, and I believe about a week later, probably the 8th or 9th of July, I received a letter from Mr. Denton in which he enclosed a copy of the minutes that I had requested, and in that letter he said he got permission from Mr. Quinn to furnish that material.

Q. And what position did Mr. Denton tell you that he was holding in the Association?

A. Well, he was a consulting engineer.

Q. For the Association?

A. For the Rigid Steel Conduit Association.

Q. Mr. Williams, I now show you Commission's Exhibit, for identification, 37-A to E, inclusive, and ask you to state whether or not you recognize that, and, if so, as what?

A. This is a copy of the minutes which I requested

125 and which Mr. Denton forwarded with his letter of July 8, 1940.

Q. In other words, you received that letter from Mr. Denton as the letter of July 8, 1940, as minutes of meeting of the Rigid Steel Conduit Association?

A. That is right.

Mr. MacIntyre: That is all of the examination that I expect to make of Mr. Williams at this time. In fact, it is all of the examination on these matters that we have just covered. It is highly probable that before the case closes that I will recall Mr. Williams for identification of

further documents, but as to these documents that is the complete examination, so I now tender him for cross-examination on matters covered today.

Mr. King: May we be permitted to see the exhibits before we cross-examine this witness?

Trial Examiner Norwood: Certainly.

Mr. MacIntyre: I suppose if respondents' counsel now want to look at these minutes I had better offer them in evidence and save other examination of them on more than one occasion.

Trial Examiner Norwood: All right.

Mr. MacIntyre: So I now offer into evidence Commission's Exhibit, for identification, 8-A to C.

Mr. Gilpatric: Give us the date and whether it is directors or the Association—

126 Mr. MacIntyre: Meeting of board of directors of the Rigid Steel Conduit Association minutes of November 20, 1936:

Commission's Exhibit 35-A to E, minutes of a meeting of the Rigid Steel Conduit Association, April 19, 1939;

Commission's Exhibit, for identification, 37-A to E, minutes of a meeting of the Rigid Steel Conduit Industry, November 16, 1939;

Commission's Exhibit 38-A to C, minutes of a meeting of the Rigid Steel Conduit Association, April 16, 1940.

Cross-Examination by Mr. Stewart.

Q. Mr. Williams, I believe you received the utmost cooperation from Major Quinn in your quest for papers.

Mr. MacIntyre: I object. It calls for irrelevant and immaterial matter.

Trial Examiner Norwood: Well, I think he might say that.

127 The objection is overruled.

A. Yes, I did. He gave me access to everything I requested. He told me when I left if there was any further information he could furnish he would be glad to do it.

By Mr. Stewart:

Q. With reference to your efforts to obtain access to the files of the Association in New York at its office on West Forty-second Street, was there any effort made by anybody to prevent you from seeing those files?

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A. No, it was not a question of preventing me from seeing them. Mr. Denton just did not have permission to allow examination, and I wired Mr. Quinn; later after I got back to Washington I received permission, but I did not go back to examine them.

Q. Now, as a matter of fact, however, you did have full access to those files in Pittsburgh within the last week or so?

A. Yes, I did.

Q. And I should like to clear one matter: Did you say that Mr. Denton told you he had been the secretary of the Association, or had been the acting secretary, or what did he say?

A. No, he said he was the consulting engineer. He never made any statement that he held any official position other than that.

Mr. Stewart: That is all.

128 By Mr. Stewart:

Q. Well, someone got the impression from one of your answers that Mr. Denton said he had been secretary, and I was confident you had not said that.

A. No, I did not.

By Mr. Gilpatric:

Q. No. The question was, Mr. MacIntyre asked you whether Mr. Denton said at the time you saw him in June, 1940, that he was then the consulting engineer whereas the Commission's Exhibit 38-A to C contains a resolution that the Association be dissolved as of May 31, 1940.

Now, was it your testimony that Mr. Denton told you in June, 1940, that he was then acting as consulting engineer for the Association?

A. He did.

Q. You are sure about the present tense of that?

A. He said he had been for several years, and he was still acting in that capacity, and that was the only activity which he had, was to conduct technical investigations of the product which was sold, and he was still acting in that capacity. At least he said he was receiving his pay from the conduit group for that purpose.

Q. Well, I am trying to make a distinction between the industry and the Association. Are you testifying that the statement he made to you as acting in that

129 capacity was for the Association rather than the industry?

A. That is what he said.

Mr. Stewart: We have nothing further.

Mr. King: I have some questions.

By Mr. King:

Q. Mr. Williams, you testified that you had called on a number of respondents. Will you name them, please?

A. Well, I called on some who are not named respondents, and some who are.

Q. Will you name them all, please, as many as you can remember?

130 A. Well, I called on the Central Tube Company, Mr. H. D. Morrow there, and I called on Spang-Chalfant, I believe Mr. Duford was the man I called on there. I called on Enameled Metals Company, Mr. L. R. Quinn there; and the Garland Manufacturing Company, Mr. Robert Garland I believe was the man I talked to there; and the Fretz-Moon Tube Company at Butler, and I believe the man I called on there was J. M. Baton. I called on Triangle Conduit and Cable Company in New York, and the man I talked to there was Mr. Julian A. Hawks. I called on Mr. Penn Denton of the Rigid Steel Conduit Association. I called on the secretary of the National Electrical Wholesalers Association, whose name I do not recall. I called on Mr. E. B. Latham—I believe L. S. Latham instead of E. B. Latham, who was on the Conduit Committee of the National Electrical Wholesalers Association. I called on Mr. Walter J. Drury, who was also on the Conduit Committee; and some others the names I cannot recall.

By Mr. King:

131 Q. Did you ask Mr. Quinn any question concerning the time that he was an officer? I believe you said he was treasurer of the Association.

A. Yes. He was the treasurer of the Association at one time.

Q. Did you ask him the time, the period?

A. No, I did not.

Q. You do not know?

A. No.

Q. Did you get any documents from anybody else other

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than those that have been introduced by Mr. MacIntyre through you?

A. I think I got about four or five hundred from some of the others in various forms. I do not recall exactly how many.

Q. Where are those documents?

A. I assume they are in the Commission's file. I do not know about them. I have not examined it recently.

Q. Did you get documents from all of the respondents that you have named?

A. No, I did not.

Q. But you got four or five hundred of them from various ones you named?

A. Various ones; that is right.

Q. What was the nature of those documents; that is, in general, I do not mean in detail.

A. Well, some of them were letters that were writ-
132 ten by members of the industry to each other; some of them were letters that were written to their general salesmen; some of them were written to sales agents, some of them were releases by the Organization Service Corporation; some of them minutes of meetings.

Q. Of the Association?

A. Of the Association, and also National Electrical Wholesalers Association, its Conduit Committee.

Q. Did you make any effort to contact the secretary or the party who wrote up the minutes, Commission's Exhibit 35-A to E, 38-A to C, 37-A to E, and 8-A to C?

A. I do not know who wrote them up.

Q. You made no effort to find out?

A. I assumed that the minutes would show. I do not know.

Q. Well, did you make an effort to find out?

A. Who wrote them up? No, I did not.

Q. And you made no effort to contact the party who wrote them up?

A. I might have contacted the party. I did not ask who wrote them.

Q. Did you make any attempt to contact the party whose purported signature was on the minutes, if any?

A. Well, in some of the minutes I recall were written up by Herbert S. Blake, or Robert S. Booth, and I called on both of them, I called on Mr. Denton who had writ-
133 ten up some of them.

Mr. King: I think that is all.

Trial Examiner Norwood: Examine.

Mr. King: I do have one other question, if I may ask, Your Honor.

By Mr. King:

Q. Did you, on the investigation tour that you are testifying about, procure any exhibits from 1-A to 44 Commission's introduced in evidence here?

A. I don't know what those exhibits are. I haven't seen them, so I couldn't identify them unless I saw them.

Q. Well, subsequent—

Mr. King: I don't want to delay the proceedings. May I ask this witness at a subsequent time to look over those exhibits and see if any of them were gotten by him on his tour?

Trial Examiner Norwood: You may do that; yes. I will ask him to do that.

Proceed, Mr. MacIntyre.

Redirect Examination by Mr. MacIntyre.

Q. Mr. Williams, I show you Commission's Exhibits 41-A to B and 42. Will you state whether or not those are two documents which you secured from other people that you investigated in the industry and are among 134 those that you just told Mr. King that you had picked up in addition to those that you previously identified here today?

A. 41-A and B were furnished me by Mr. Alfred Byers who, I think, was the secretary of the National Electrical Wholesalers Association at the time I visited his office on June 21, 1940, and 42 was received from Mr. Byers by letter July 5, 1940.

Q. In other words, these would be among other documents which you just told Mr. King that you selected from different members of the industry in the field while you were investigating?

A. That is right.

Q. This would be typical of documents such as you got from others in the field?

Now, Mr. Williams, Mr. Stewart asked you about some of the cooperation that you received from Major Quinn during the course of your investigation and examination

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of his files. Let me ask you a question on that point: Where did you first go to the offices—where and when did you first go to the offices of the Rigid Steel Conduit Association for the purpose of investigating its products?

A. That was on June 24, 1940.

Q. Where was that?

A. That was in New York, 17 West Forty-second Street.

Q. And you asked for access to the files at that
135 time for examination?

A. I did.

Q. And what response did you get?

A. I was told by Mr. Denton that I would have to obtain permission from Mr. Quinn for examination; that he had no authority to grant permission to examine the files.

Q. And did he say why that you would have to get that permission from Mr. Quinn?

A. He merely said they were in Mr. Quinn's custody, and at that time he thought he was the temporary chairman.

Q. Of the Rigid Steel Conduit Association?

A. Yes.

Q. And the files were in New York?

A. Yes, they were. That is what I was told.

Q. And Mr. Quinn was in Pittsburgh?

A. That is right.

Q. And did Mr. Denton get that permission for you from Mr. Quinn?

A. I wired Mr. Quinn direct.

Q. And what response did you get?

A. Well, I didn't receive any reply until after I returned to Washington. I don't know whether Mr. Quinn was at his office or where, but that was the situation about it.

Q. In other words, you never got permission to examine those files at that time?

136 Mr. Stewart: No. No. I submit that that is leading, in the first place. That is not the proper way for counsel to examine his own witness. Let him ask him what happened.

Trial Examiner Norwood: Objection sustained.

Mr. MacIntyre: The witness has testified. I am merely attempting now to connect the two situations together.

Trial Examiner Norwood: Well, he is your witness. You can't lead him.

Go ahead.

By Mr. MacIntyre:

Q. Did you ever get permission from Mr. Quinn to examine those files in New York while they were there?

A. Yes. He wired permission—

Q. Where did that—

A. —to examine them, but I was back in Washington at that time.

Q. And how long were you in New York after you applied for permission before you left there?

A. I believe I sent him a wire on the 28th and I left there on the 29th or 30th. I am not sure about that.

Q. And did you ask at that time specifically to examine the portion of those files that dealt with the management of the Rigid Steel Conduit Association by the Organi-
137 zation Service Corporation?

Mr. Stewart: Well, now, I submit that if we are going into an inquiry as to what he asked for, in view of the fact that the witness said he sent a telegram, that a copy of it be produced unless the witness is going to undertake to recall what he asked for.

Mr. MacIntyre: I objected to going into this, but now I have got to follow it through to show just what the facts are. I insist that I have a right to do so.

Mr. Stewart: I am not objecting to that. I am asking you to show the facts.

Mr. MacIntyre: That is what I am doing.

Trial Examiner Norwood: I will ask the witness if he had any difficulty, in the first place, in getting access to these papers?

The Witness: No, I did not.

Mr. Stewart: That is the point. He has had access to them since he said that.

Mr. MacIntyre: Well, now, it is going to be necessary to develop some details here.

Trial Examiner Norwood: All right.

By Mr. MacIntyre:

Q. Didn't you request, while you were in New York, that you be permitted to examine the portion of the Rigid Steel Conduit Association files that dealt with the
138 management and activities of that Association by the Organization Service Corporation?

Mr. Stewart: That is objected to as leading.

Mr. King: That is a leading question.

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Trial Examiner Norwood: Read that question.
(Question read.)
Trial Examiner Norwood: Objection sustained.
Mr. Stewart: May I suggest, aside from the fact it is leading, it is meaningless unless we know of whom he made the request. "Didn't you request" means nothing. Who did he request it from?
Trial Examiner Norwood: Well, it has been ruled out as leading, anyway.
Proceed.

By Mr. MacIntyre:

Q. Mr. Williams, did you specify when you visited Mr. Denton in June, 1940, at the offices of the Rigid Steel Conduit Association, that he permit or have someone grant you permission to look at the files of that Association?
A. I did.
Q. And what files, if any, did you specify that you be permitted to examine?
A. Well, I just requested him to allow me to examine all the files that were in his office, including those during the period which the Organization Service Corporation was connected with the Conduit Association.
139 Q. All right. Did you get the opportunity to examine those files, including those of that period, at any time?
A. I just—shall I—if I may go into detail about it, I can explain—
Trial Examiner Norwood: Yes.
A. —how it all happened.
Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. Just tell us what the facts are.
A. I first met—asked Mr. Denton about those files with the Organization Service Corporation. He said he didn't have them in his possession; that the only files turned over to him by Mr. Blake were those files that related to the financial transactions between the Organization Service Corporation and the Conduit Association and the files relating to the tonnage reports. He said that those were the only files that had been turned over to him by the Organization Service Corporation. Then I visited Mr. Herbert S. Blake and asked him for permission

to examine those files, and he said he didn't have them; that he had turned them over to Mr. Denton.

Q. Did you ever locate the files?

A. So I then wired Mr. Quinn for permission to make a general investigation of the files and received that permission only then after I had returned to Washington, which was within a period of a day or a day and a half.

140 Q. Have you since you made that request received permission to examine the files of the Rigid Steel Conduit Association at any place?

A. I did.

Q. Where?

A. Pittsburgh.

Q. Did you when you examined those files find that portion of them which dealt with the Rigid Steel Conduit Association when it was under the management of the Organization Service Corporation?

A. Nothing except the tonnage reports.

Q. No other files concerning the activities of the Organization Service Corporation in those files; is that right?

A. Nothing except which appeared in the minutes of the meetings which we examined.

Q. There were no papers in there concerning the investigation of contracts?

A. There was no correspondence in there between the Organization Service Corporation and any members of the Association in connection with anything except the tonnage statistics.

Q. And did Mr. Quinn tell you why they were not there?

Mr. Stewart: He assumes he asked Mr. Quinn. Let him ask whether he asked Mr. Quinn.

Trial Examiner Norwood: He may examine. Overruled.

141 A. I didn't see Mr. Quinn while I was examining those files.

Q. You haven't found out why those other papers of the Rigid Steel Conduit Association were not in the files when you examined them?

A. Mr. Blake told me that he had destroyed them when he withdrew from the Association. After I had gone back to him a second time he told me he had turned them over to Denton. I virtually told him I didn't believe it, so he said he had probably destroyed them when he withdrew from the Association.

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Q. So those that were destroyed you didn't have an opportunity to examine?

A. No, sir.

Mr. MacIntyre: That is all.

Trial Examiner Norwood: Any other cross-examination?

Mr. Welch: I would like to cross-examine the witness so far as Mr. Blake is concerned.

Trial Examiner Norwood: Proceed.

Recross-Examination by Mr. Welch.

Q. When did you have your conversation with Mr. Blake?

A. I talked to him on two occasions, and I believe it was the 25th or 26th of June, I am not sure, 1940.

Q. Is this the first conversation?

142 A. That was the first conversation. At that time--

Q. What did you ask him at that time?

A. Well, I discussed his—his connection with the Rigid Steel Conduit Association generally, as to what activities were engaged in, and requested his permission to examine the files which he had had with members—any correspondence he had had with members of the Association, or with its officers or directors.

Q. Did he tell you when he had ceased his connection with the Rigid Steel Conduit Association?

A. I didn't ask him that.

Q. Did he tell you?

A. I don't recall that he did. He told me he had severed the connection, but I don't recall that he told me the exact date.

Q. But you knew at that time he was no longer connected with it?

A. The minutes of the Association meeting which I had examined indicated exactly the date that he discontinued his activities.

Q. You had read those minutes before you had your conversation with Mr. Blake?

A. Yes, sir.

Mr. MacIntyre: Now, just a moment. I object to going into an examination of this witness on what he has read

143 from minutes. I haven't gone into such in my examination of him, and if we are going to go into what he

has read, that is another matter. It is something I object to at this time.

Mr. Welch: I am not going into what he has read. I am going into his knowledge at the time he talked with Mr. Blake, whether or not Mr. Blake had any connection with the Association at that time. The only purpose I ask that question is whether or not he knew.

Trial Examiner Norwood: You may answer. Objection overruled.

Answer the question.

By Mr. Welch:

Q. You had read the minutes and knew that he had resigned some time prior to that?

A. That is what the minutes indicated.

Q. Then you said you had a second conversation with Mr. Blake?

A. That is right. With Mr.—

Q. When was this?

A. That was, I think, the 27th or 28th, I am not sure about which day that was, of June, 1940. It was about two days after I had talked to him the first time.

Q. Had you in the meantime, between the first and second conversation, had a talk with Mr. Denton?

144 A. I had.

Q. And from your understanding of the two conversations, you mean to say there was a flat contradiction between what Mr. Denton said with respect to the minutes and what Mr. Blake said with respect to the minutes? I mean the delivery of the directors' minutes?

A. I don't know whether you would call it a contradiction, but I can tell you what they said about it. I first called on Mr. Denton. He said Mr. Blake had them. Then I called on Mr. Blake and he said Mr. Denton had them, so I went back to see Mr. Denton again.

Q. What were you talking about when you talked with Mr. Blake?

A. Any correspondence that he or the Organization Service Corporation or Robert S. Booth might have had with any members of the Association or any bulletins or releases that he might have sent out to the Association, or any conversations, meetings, conferences in regard to their so-called specific building contracts and uniform sales contracts.

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Q. Did he tell you they kept such records?

A. He said they had had them, yes.

Q. Did Mr. Denton also tell you that they had kept such records?

A. Mr. Denton said he didn't know; he had only to do with the technical activities of the Association and
145 not the commercial activities.

Q. Didn't you state a little while ago that Mr. Denton said he was then acting as secretary or temporary chairman of the Conduit Association at that time?

A. No. I said he said he was acting as consulting engineer.

Q. I think on your redirect Mr. MacIntyre brought out the fact, and you stated, that Mr. Denton told you he was then acting as temporary chairman of the—

Mr. MacIntyre: I called attention on the record that he was making reference to a statement that Mr. Denton made about Mr. Quinn.

Mr. Welch: Oh, Mr. Robison also corrected me. I am wrong.

By Mr. Welch:

Q. Now, in regard to these records that Mr. Blake said —you said he then—after your second conversation with him he said he might have destroyed them?

A. That's right.

Q. Did he confirm that in any way?

A. Well, he didn't show them to me so I don't know whether he had destroyed them or not. He said he had. He probably had. He didn't say definitely that they were destroyed.

Q. Did he say what records?

A. Well, he said that all the bulletins he sent out
146 were multigraphed or mimeographed, and he didn't know whether he had retained copies of them or not, and if he had he had probably destroyed them.

Q. Did you get the impression that what he had were the only copies and that he had destroyed them, or that there were other copies in the hands of others?

A. I knew there were other copies because I had seen them in the hands of other parties.

Mr. Welch: That is all.

Trial Examiner Norwood: Anything further?

Redirect Examination by Mr. MacIntyre.

Q. When you say "other copies," Mr. Williams, you mean you had knowledge of the fact that there were copies of all bulletins in the hands of other people that the Organization Service Corporation had sent out, or that there were probably some copies somewhere?

A. I saw some copies. I don't know how many others there might have been. I saw some copies of releases, and so forth, that were in the hands of the manufacturers.

Q. But you don't know how many have continued in existence that would be available to you anywhere?

A. No, I don't.

Mr. MacIntyre: Thank you.

147 *Recross-Examination by Mr. Stewart.*

Q. You saw some when you were in the office; didn't you?

A. Yes.

Mr. Welch: Do you want us to make our objections at this time as to the introduction of exhibits while the witness is on the stand?

Trial Examiner Norwood: Yes. You may do that.

Mr. Welch: I think we should do that before the witness is excused.

I object to Exhibits 8-A to C.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Go ahead.

Mr. Welch: And 38-A to C, 37-A to E, 35-A to E on the grounds that these were minutes at a period of time when the Organization Service group of respondents were no longer connected with the Rigid Steel Conduit Association.

Trial Examiner Norwood: Any further objections?

Mr. King: I object to all of the exhibits introduced through this witness on the ground they are wholly incompetent and have no probative force under the complaint to prove any of the allegations. I furthermore move to strike from the record Commission's Exhibits 1, to and through 44 which are all exhibits up to date on the ground that they are only part of those exhibits or only part
148 of what this witness found, and I think Mr. MacIntyre is bound to make available to all respondents all

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of the evidence, the documents that this witness secured and cannot introduce a part of it and hold back a part, so I move to strike all of the exhibits.

Trial Examiner Norwood: Oh, I think he can. Motion denied; and the respondents may introduce the remainder. It is their own records.

Mr. Poskanzer: I wish to take advantage of the general motion on these exhibits and the objection to them and also all exhibits or minutes after August 1, 1938, at which time the Cohoes Rolling Mill Company resigned this Association, as not binding on it.

Mr. McDaniel: I object to Exhibits 8-A to C, 35-A to E, and 37-A to E on behalf of Spang-Chalfant. Spang-Chalfant at that time had no connection with the Association, or at any other time, and never was a member of the Association. And as to 38-A to C, I object to it on behalf of Spang-Chalfant because as to Spang-Chalfant it is hearsay. Spang Chalfant never authorized anybody to take these minutes for it. As to Spang Chalfant, as a matter of fact, the minutes are erroneous and they are not binding on Spang Chalfant in any way.

Trial Examiner Norwood: Any further objections?

Mr. Tucker: If Your Honor please, since these other 149 objections have been made, I think I had better make the same objection for the Laclede Steel Company.

Trial Examiner Norwood: I don't think that their having been made would oblige you to make them, in view of my statement about it. It would not be tied to your company unless it is substantially connected.

Mr. Gilpatric: I rest on Your Honor's statement, too.

Mr. Peyser: So do I.

Trial Examiner Norwood: The objection is overruled, and counsel have their exceptions.

The following exhibits are received in evidence: Commission's Exhibits 8-A to C, 35-A to E, 37-A to E, and 38-A to C are received.

(The documents heretofore marked for identification "COMMISSION'S EXHIBITS NOS. 8-A to 8-C, 35-A to 35-E, 37-A to 37-E, and 38-A to 38-C," both inclusive, were offered and received in evidence.

Mr. MacIntyre: May we ask that the witness now be discharged subject to recall as to other matters?

Mr. Stewart: May I ask one other question while he is here just to clear the record?

Trial Examiner Norwood: Go ahead.

By Mr. Stewart;

Q. Mr. Williams, I think you said you conferred 150 with Mr. Morrow of the Central Tube Company.

A. I did.

Q. When was that?

A. That was while I was in Pittsburgh, just, I think, the day after I talked with Mr. Quinn. I am not sure exactly what day it was. That was in June, 1940.

Q. 1940. Thank you.

By Mr. McDaniel:

Q. When did you talk to Mr. Dufort of Spang Chalfant?

A. That was in June, 1940.

Q. That was in Pittsburgh, too?

A. That is right.

Mr. MacIntyre: May I ask a question on that?

Trial Examiner Norwood: Go ahead.

Redirect Examination by Mr. MacIntyre.

Q. These men represented themselves to you as representing those companies at that time, did they, Mr. Williams?

Mr. Stewart: Wait a minute. I think that it leading. I object to that. Let him say what they said.

Trial Examiner Norwood: I think so.

Mr. Stewart: The record shows when Central Tube was dissolved, and I think it will similarly show when Spang Chalfant went into the tube business. Let us know what the man said.

151 By Mr. MacIntyre:

Q. Who did they tell you they represented at that time, Mr. Williams? That is, these two gentlemen that the last questions were asked about?

A. Mr. Dufort represented Spang Chalfant, I believe, in the capacity of sales manager of Conduit.

Q. Did he tell you so?

A. If I remember correctly, yes.

Q. What about Mr. Morrow, H. G. Morrow?

A. Mr. Morrow said that his company had discontinued its business and sold its conduit, all that it had on hand to Spang Chalfant, but it was still incorporated and he was still an officer of the company.

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Q. That is, of the Central Tube Company?
A. Yes.
Mr. MacIntyre: That is all.
(Witness excused.)
Trial Examiner Norwood: Call your next witness.
Mr. MacIntyre: Your Honor please, I make reference to Commission's Exhibits, for identification, 46, 47, and 48, and I will ask—
Trial Examiner Norwood: Go ahead.
Mr. MacIntyre: Back on the record.
152 I will ask Mr. Austin, attorney for the National Electrical Wholesalers Association, whether he recognizes those certifications on the reverse side thereof as to the authenticity and genuineness of those documents as his.
Mr. Austin: Those were secured from the files of the Electrical Wholesalers Association and certified by me.
Mr. MacIntyre: As authentic and genuine documents as they purport to be?
Your Honor please, I now offer these three documents into exidence.
Mr. Stewart: May we see them, please? Forty-six, forty-seven, and forty-eight.
Trial Examiner Norwood: Proceed, gentlemen.
State your objections, if any.
Mr. Stewart: As to Exhibit No. 47, this is objected to for the reason that it is obviously an ex parte state-
153 ment on the part of Mr. Tolles, containing his conclusions and impressions, and, in addition, the document shows on its face that it is not only hearsay but hearsay upon hearsay, and it is unquestionably a communication between Mr. Tolles and Mr. Drury, concerning a matter over which none of the manufacturing respondents or the individual conduit respondents—I mean conduit respondents, individual conduit respondents—would have any control or would in any way be bound by it.
Now, if you are not familiar with the letter I wish you would look at it because it seems to me that it is carrying the matter a bit too far.
(The document was handed to the Trial Examiner.)
Trial Examiner Norwood: What is the purpose of this?
Mr. MacIntyre: It so happens that the writer of that letter is the chief, was at the time that letter was written chief of one of the principal respondents here, the National Electrical Wholesalers Association. They were at that

time planning, and did immediately subsequent to the writing of that letter, go through with a joint meeting of representatives of the principal members of the National Electrical Wholesalers Association with the principal members of the Rigid Steel Conduit Association for the purpose of working out policies, marketing plans and prices, if you please.

154 Trial Examiner Norwood: Do you mean you propose to show that, or is that your contention?

Mr. MacIntyre: The record already partially shows that this document, and others which are to follow that will supplement that, show it.

Mr. Austin: If Your Honor please, I have no objection to this letter but I must strenuously object to the statement just made by Mr. MacIntyre: I would like to move that it be stricken.

Trial Examiner Norwood: Well, that is not considered as evidence in any way whatsoever.

Mr. Austin: It is a little bit extreme; I think the letter offered shows precisely the opposite of what he has stated.

Trial Examiner Norwood: Well, the letter prevails. If that is the case, the letter will prevail.

Unless it is something that is very serious, I should not strike any remarks of counsel in cases like this, where there is no jury.

Mr. Stewart: Despite Mr. Austin's point of view with regard to the admissibility, I do object to it. I insist it is not admissible for the reasons given.

Trial Examiner Norwood: Well, that is Commission's Exhibits 46 to 52?

Mr. Stewart: No, sir; Commission's Exhibits 46,
155 47, and 48. I have said nothing about Commission's Exhibits 46 or 48, as I recall it, just Commission's Exhibit 47.

Trial Examiner Norwood: Yes. Go ahead.

Mr. Stewart: Well, I have already stated my objections to it.

Trial Examiner Norwood: Are you waiting for a ruling on the objection before making your other objections?

Mr. Stewart: Yes. I have no objection to the other two exhibits.

Trial Examiner Norwood: I overrule the objections and will receive the three exhibits, Commission's Exhibits Nos. 46, 47, and 48 in evidence.

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COMMISSION'S EXHIBITS NOS. 46, 47, and 48, were offered and received in evidence.

Trial Examiner Norwood: On the record.

Mr. Taylor: Mr. Examiner, I wish to go on record on joining in Mr. Stewart's objection to the admissibility.

Mr. MacIntyre: Now, if Your Honor please, I make reference to Commission's Exhibit, for identification, 156-50-A to G, inclusive; Commission's Exhibit 51-A to I, inclusive; Commission's Exhibit 52-A to I, inclusive; and I wish to ask Mr. Peyser, as attorney for Triangle Conduit & Cable Co., Inc., New York Corporation, Triangle Conduit & Cable Co., Inc., a Delaware corporation, and the M. B. Austin Company, to concede on the record that these are genuine, authentic—I mean correct copies of genuine, authentic agreements which were entered into by those companies he represents with the Fretz-Moon Tube Company. That goes as to Commission's Exhibit 50, and Commission's Exhibits 51 and 52 are agreements between the Triangle and the M. B. Austin Company.

In other words, Mr. Peyser, you agree and admit, do you, that Commission's Exhibit, for identification, 50-A to G, inclusive, is a correct copy of an authentic and genuine agreement between the Triangle Conduit Co., Inc., a New York corporation, and the Fretz-Moon Tube Company.

Mr. Peyser: That is correct.

Mr. MacIntyre: On the date shown on the face of it?

Mr. Peyser: June 1, 1926.

Mr. MacIntyre: December 1, 1926, shows on the face of the document.

Mr. Peyser: That is correct.

157 Proceed.

Mr. Peyser: Mr. MacIntyre, Commission's Exhibit 51-A to I, dated January 2, 1935, and Commission's Exhibit 52-A, November 25, 1939, between Triangle and M. B. Austin.

Mr. MacIntyre: Well, Mr. Peyser, you admit and agree that Commission's Exhibit 51-A to I is a correct copy of an agreement—that is, of January 2, 1935, between Triangle Conduit & Cable Co., Inc., a New York corporation, and M. B. Austin Company, respondents here?

Mr. Peyser: That is correct, sir.

Mr. MacIntyre: And you also admit that Commission's Exhibit 52-A to I is a correct record of an agreement made

the 25th day of November, 1939, between the Triangle Conduit & Cable Co., Inc., a New York corporation, and M. B. Austin Company, respondents in this case?

Mr. Peyser: Yes.

Mr. MacIntyre: If Your Honor please, I offer these three documents mentioned, Commission's Exhibits 50, 51, and 52 into evidence.

Mr. Stewart: Now, we haven't seen these at all, so I am going to have to ask for a minute or two to look at them.

Trial Examiner Norwood: That is right.

Mr. Stewart: May I have an offer as to what you propose to prove by these, these being matters entirely between two respondents, and going back as early as December,
158 1926, which raises the question as to how far back in view of the averments of the complaint that the matters in the complaint are more or less of a restricted nature over a restricted period—I think the language is. What is the language, six years last past, which, of course, is a formula that opens the doors to—

Trial Examiner Norwood: Yes, more than.

Mr. Stewart: Yes, more than six years last past; but do we go back to 1926, or do we go back further?

Mr. MacIntyre: Well, as to the method of pricing, that is treated in that particular document, yes, we go back that far in this case. I do not say that the limit is at that date as to the method of pricing used in this industry.

Mr. Stewart: Well, do I understand then your offer is to prove by the document, Commission's Exhibit 50-A, which on its face purports to be a contract between the Fretz-Moon Tube Company and Triangle Conduit Co., Inc., the practice in the industry with regard to fixing prices; is that what you are offering to prove by this?

Mr. MacIntyre: They were at that time fixing prices pursuant to the use of a formula for pricing.

Mr. Stewart: I object to it, then, on the ground that it is admittedly a private arrangement between two of the respondents in the year 1926, which could in no way be binding on the other respondents, and there being no
159 offer to prove that a similar arrangement was made between any of the other respondents, or that this was brought home to the respondents. The document is inadmissible as against any respondent other than the two companies.

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Do you want to look at it (handing the document to the Trial Examiner)?

Mr. Stewart: That is one. I have not seen the others. Is the same true as to the others?

Mr. Peyser: It is the same type of agreement.

Mr. Stewart: Will you look, Mr. Examiner, to see when it expired? I think by its own terms it expired in 1929, the last paragraph. I should have added that.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: On the record.

September 30, 1931, is the expiration date.

Mr. Stewart: It expired by its own terms.

Now, Mr. Examiner, with reference to Commission's Exhibit 51-A, this is a document which shows on its face to be an agreement dated January 2, 1935, between Triangle Conduit & Cable Company, one of the respondents, and M. B. Austin Company, another of the respondents, and the document is in reference to a non-exclusive agency agreement between these two companies, an entirely private
160 arrangement, and I submit that under no theory is it admissible without more as against any of the respondents other than the two. I do not see how it helps us in any way at all.

You would probably like to consider all three.

Trial Examiner Norwood: Yes. I will have to.

Mr. Stewart: And the same objection, I understand it goes to Commission's Exhibit 52-A, which is another non-exclusive agency agreement dated the 25th of November, 1939.

Mr. Peyser, does that continue that other one?

Mr. Peyser: The one supersedes the other.

Mr. Stewart: In other words, Commission's Exhibit 52-A supersedes Commission's Exhibit 51-A, so that you get the connection.

Trial Examiner Norwood: Now, it is your contention that this discloses a method, a pricing method?

Mr. MacIntyre: That was used not only by these companies but used by the industry, and it was applied through the execution of these contracts by agreement as between these two parties.

Trial Examiner Norwood: Do you undertake to show that this was used generally?

Mr. MacIntyre: The first contract shows the method,

the usual method in the industry at that time, and it was employed by these two people; that is, these two respondents by agreement, and through an agreement the
161 prices that were used by other respondents here, namely, the Central Tube and Youngstown Sheet & Tube and the National Electric Products Corporation.

Mr. Peyser: If Your Honor please, on behalf of Triangle and on behalf of M. B. Austin, I had intended after the attorney for the Commission finished this case, submitting or requesting to submit these in evidence for an entirely different purpose.

I refute the statements made by Mr. MacIntyre. I think the agreements clearly indicate, and that you will draw the proper inference from a reading of them, that the only purpose of mentioning the price sheet in fixing of any price,—there is no fixing of price,—is where another manufacturer who does not desire to manufacture any particular item desires you to sell it to him, it is highly improbable that you would sell it to him or permit him to sell it at a price which would defeat you in your own market. M. B. Austin was in direct competition, which will be shown, and the method of fixing a price is that it is based on our published price sheet. That is the way of determining the price, and I think the inference may properly be drawn.

Mr. MacIntyre: I am only after the facts. The contracts show what the facts are.

Trial Examiner Norwood: I will reserve the ruling. I should like to read them before hearing any further
162 objections.

(The documents referred to were marked for identification "Commission's Exhibits 50-A to 50-G, 51-A to 51-I, and 52-A to 52-I," both inclusive.)

Mr. Welch: I do not think Mr. MacIntyre, however, has answered Your Honor's question as to whether he proposes to show this is a general practice in the industry.

Mr. MacIntyre: The contract does show.

Trial Examiner Norwood: I think I understood that he did undertake to show that, but I will see about that.

Now, we will recess until 1:15. Is that all right with you gentlemen?

Mr. MacIntyre: If Your Honor please, I would like to suggest this: Many of the counsel have documents with them that they are bringing here pursuant to request.

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If they will all remain for a matter of 20 minutes or more, while we are in adjournment, we can then arrange those in an order so that they can be marked and so that the Reporter can start marking them by 1 o'clock, and in that way we will save much time this afternoon.

Mr. Gilpatric: Could we have a longer recess then in view of that?

163 We will recess until 1:30 o'clock.

(Whereupon, at 12:15 o'clock p. m., a recess was taken until 1:30 o'clock p. m. of the same day.)

164 **Afternoon Session. 1:30 P. M.**

Trial Examiner Norwood: Hearing come to order. I believe there is another objection here to this 51, 52. Does counsel want to make any other objections to that, those contracts?

The objections already made are overruled and these are received in evidence as against the respondents concerned and against any others who may be substantially connected therewith. 50-A to G, 51-A to I, 52-A to I.

COMMISSION'S EXHIBITS NOS. 50-A to 50-G, 51-A to 51-I, and 52-A to 52-I, were offered and received in evidence.

Mr. King: If Your Honor please, I believe Mr. Stewart objected to Exhibit 47 but did not object to Exhibit 40—

Mr. Stewart: Six and eight.

Mr. King: Six and eight. I would like to object to those exhibits on the part of Clayton Mark on the ground that they are as to Clayton Mark fully incompetent, irrelevant, and immaterial to prove any of the allegations in the complaint.

Trial Examiner Norwood: They are already received in evidence.

Mr. King: Might I have my objection by moving to strike them out on that ground?

165 Trial Examiner Norwood: I know what the objection is.

Proceed.

Is there anything further to be said on the exhibits from 18 to 33, inclusive?

Mr. Stewart: Well, as I recall the state of the record,

Mr. Examiner, as we left it this morning, I started to state my objections, and, as I recall it, you stated that you had not had a chance to read them through, so I stopped at that point, so nothing has been done one way or the other with them.

Trial Examiner Norwood: Well, I have given them an examination.

Mr. Stewart: Sir?

Trial Examiner Norwood: I have given them an examination which I think is sufficient to understand your objections now.

Mr. Stewart: Very well. Thank you.

Trial Examiner Norwood: You can go ahead.

Mr. Stewart: Possibly you can refresh my recollection. As I remember it, Mr. Examiner, there are some of those technical features in these minutes—as I recall, there is a considerable—

Trial Examiner Norwood: There are none as long as that engineer's report which we excluded this morning.

166 Mr. Stewart: I see here an exhibit, 30-A. There are probably eight or ten pages on the question of standard specification, and so forth. Aside from that—

Trial Examiner Norwood: What were these pages? Will you look at that more carefully?

Mr. Stewart: Exhibit 30-A—being on 30-D and ending with—ending with and including 30-N, the date in the document, Exhibit 30-A, consists of minutes and discussion with reference to conduit standards, and I submit that that is immaterial under all of the allegations of the complaint.

Mr. Gilpatric: The same thing is true, Mr. Examiner, of Commission's Exhibit 18, beginning with page 18-C and continuing through page 18-J. That portion I have mentioned include letters from the United States Treasury Department and letters about the New York Central's specifications to which I should think your suggestion this morning would be applicable.

Trial Examiner Norwood: Off the record, now.

(Discussion off the record.)

Mr. Stewart: The same is true with reference to Exhibit 24-A, beginning on page 24-Q and running through to 24-Z.

(Discussion off the record.)

Trial Examiner Norwood: I will reserve the ruling on this until the next recess.

167 Mr. Stewart: Very well.

Trial Examiner Norwood: I will look at those before I rule.

Proceed.

Mr. Stewart: Just so that the other gentlemen understand, the only objection I have made to those minutes is as to the technical material in them so that if the rest of you have any other objections you had better state them now.

Mr. Peyser: I made mine fully.

Mr. Stewart: I know that you did. I don't want to leave you uninformed.

Mr. Tucker: If Your Honor please, I take it it is not necessary to repeat my objections on behalf of the Laclede Steel and Tube Company, that they weren't members and, therefore, I object to all of these.

Trial Examiner Norwood: I think I understand you correctly.

Mr. MacIntyre: Are all objections in to all pending offiers now?

Mr. Peyser: On which exhibits?

Mr. MacIntyre: On all. On all pending offers.

Mr. Peyser: I understand, Mr. Examiner, there
168 are no objections yet to 50, 51, and 52; is that correct?

Trial Examiner Norwood: They are already received in evidence; yes.

Mr. Stewart: The Examiner just ruled.

Mr. MacIntyre: Are any more objections to be made to any of the pending offers?

Trial Examiner Norwood: No. Proceed. Go ahead.

Mr. MacIntyre: Well, if Your Honor please, under the circumstances, with only a partial compliance with respect to the submission of these price cards, I must ask, in view of the circumstances, for an adjournment until tomorrow morning for the purpose of getting these together, and I ask that all counsel who have not complied with the request of getting both price cards and freight rate compilations to me will make all possible effort to do so by tomorrow morning so that we can complete the marking of them and then go on the record with respect to them. I am very regretful that we are having a tie-up of this kind, and just, so to speak, running into an obstacle in view of which we cannot go on until we overcome it.

Trial Examiner Norwood: Any objection to the recess?

Mr. Stewart: I would like to explain to Mr. MacIntyre it is not a question of not complying. It is a question of the Railway Express not bringing them to us.

169 Mr. MacIntyre: I have been informed by Mr. Peyser that some of his freight rate compilations have not been submitted to them. Will you endeavor to have those to me tomorrow morning, Mr. Peyser?

Mr. Peyser: I have Triangle. I do not have Austin. I am not sure whether I can get them. I have told you I have requested them, and I have received word that they haven't got them.

Mr. Gilpatric: Mr. Examiner, would you be willing to reconsider your ruling about leaving the consideration of these exhibits open?

Trial Examiner Norwood: If you could state definitely the number of series; in other words, as I understand it, there are a number from each company; are there not?

Mr. Stewart: Oh, yes.

Trial Examiner Norwood: And each company has an exhibit number and the individual cards are lettered; is that right?

Mr. MacIntyre: They will be lettered.

Trial Examiner Norwood: If you can tell me definitely the number.

Mr. MacIntyre: I can't tell you the number of pages in them until they are marked.

Trial Examiner Norwood: No. No. The number of series; the number of companies.

170 Mr. MacIntyre: Yes, we can do that. Give us time.

Trial Examiner Norwood: Well, how many? What are they?

Mr. MacIntyre: Well, this can be not on the record. I can give it to you for your benefit so that we can follow along with the others so that we can assign additional numbers.

Trial Examiner Norwood: Well, I should like to have my docket show they were signed and write the name of the company right in there with the number.

Mr. MacIntyre: That is what I am going to do now.

Trial Examiner Norwood: All right.

Mr. MacIntyre: But there are some of these numbers all right on the record but it will be necessary to give you the name of the company now, as has been suggested a few minutes ago so that we will be sure we are not duplicating any of the companies.

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Trial Examiner Norwood: Just give me the names of the companies whose cards are not in and I will assign a number to those cards which that company furnishes.

Mr. Gilpatric: Can we have this off the record, do you think?

Trial Examiner Norwood: Well, this explains it. It might be necessary to go back and show just what happened.

Mr. Austin: If Your Honor please, wouldn't it
171 simplify things to take Exhibits Nos. 53 to 60 and give them company names right now?

Mr. MacIntyre: That is what we are going to do.

Trial Examiner Norwood: We will go off the record now.

(There was a discussion off the record.)

Trial Examiner Norwood: On the record.

Mr. Houston: These papers are freight rate bulletins of National Electric Products Corporation, in their possession on the date on which Mr. MacIntyre wrote requesting these to be turned over. I do not claim that they are a complete set of all that have been issued, but they were all that were on hand at the date that request was made, and they are turned over in the shape they were received by me.

Trial Examiner Norwood: And you vouch for their genuineness?

Mr. Houston: I do, yes, in compliance with the request.

Trial Examiner Norwood: The Reporter will mark the papers as Commission's Exhibit, for identification, 80-A to 80-Z-54.

Mr. Tucker: The same thing, then, would apply for Laclede Steel Company, to be known as Exhibit No. 77, Commission's Exhibit, for identification.

(The documents referred to were marked for iden-
172 tification "Commission's Exhibit No. 80-A to 80-Z-54.")

Trial Examiner Norwood: You are proffering the same class of papers for Laclede?

Mr. Tucker: Yes, sir; exactly.

Trial Examiner Norwood: Do you vouch for their accuracy?

Mr. Tucker: Yes, sir.

Trial Examiner Norwood: They will be marked as Commission's Exhibit No. 77-A to 77-Z-5, for identification.

(The documents referred to were marked for identification "Commission's Exhibit No. 77-A to 77-Z-5.")

Mr. Peyser: The same thing, with respect to Triangle Conduit & Cable Co. These are the delivery charges and bulletins which I have been able to locate. I cannot tell, myself, whether they are complete or not, but they start with November, 1930, and the last one is April 25, 1938.

Trial Examiner Norwood: They will be marked for identification as Commission's Exhibit No. 75-A to 75-Z-53.

(The documents referred to were marked for identification "Commission's Exhibit No. 75-A to 75-Z-53.")

Trial Examiner Norwood: Now, are there any others?

173 Mr. MacIntyre: Does any other counsel have their freight rate compilations ready? Of course, if they do they can submit them.

Mr. King: I have mine ready and have submitted them a long time ago to Mr. MacIntyre.

Mr. Swope: On behalf of General Electric, I give you the tariff rates and delivery charges of General Electric Company since February 1, 1931, numbered Commission's Exhibit, for identification, 72-A to Z-9.

Mr. MacIntyre: Off the record.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: On the record.

(The documents referred to were marked for identification "Commission's Exhibit No. 72-A to 72-Z-9.")

Mr. MacIntyre: Are there any others to be submitted this afternoon?

Mr. Stewart: I am submitting Walker Brothers delivery charges and supplements and freight rate books and supplements thereto from November 14, 1930, to January 25, 1941.

Trial Examiner Norwood: Mark them Commission's Exhibit, for identification, 79-A to Z-246.

(The documents referred to were marked for iden-
174 tification "Commission's Exhibit No. 79-A to 79-Z-246.")

Trial Examiner Norwood: None of those includes price cards?

Mr. MacIntyre: No.

Mr. Robison: Mr. MacIntyre is presenting next freight

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bulletins and supplements thereto and delivery charges which have been furnished for respondent, the Youngstown Sheet & Tube Company, and have been certified, at least authenticated by us as their counsel.

Trial Examiner Norwood: Mark it Commission's Exhibit, for identification, 73-A to 73-G.

(The documents referred to were marked for identification "Commission's Exhibit No. 73-A to 73-G.")

Mr. King: The photostat copies which Mr. MacIntyre has in his hands are photostatic copies of all of the delivery charges, freight rate sheets, and bulletins in the possession of Clayton Mark & Company at the time Mr. MacIntyre made his request.

Trial Examiner Norwood: Clayton Mark will be Commission's Exhibit, for identification, 74-A to 74-Z-99.

(The documents referred to were marked for identification "Commission's Exhibit No. 74-A to 74-Z-99.")

175 Mr. MacIntyre: I have two booklets here that I want numbers given to as Commission's exhibits.

Trial Examiner Norwood: Are the pages numbered?

Mr. MacIntyre: They are 47 pages each?

Trial Examiner Norwood: Mark them for identification Commission's Exhibits 89 and 90.

(The booklets referred to were marked for identification "Commission's Exhibits Nos. 89 and 90.")

Mr. MacIntyre: If your Honor please, I am making reference now to documents marked for identification as Commission's Exhibits 89 and 90.

I will ask counsel for Youngstown Sheet & Tube Company to concede on the record that these two documents were printed and caused to be published by the Youngstown Sheet & Tube Company, and that the last one, No. 90, was submitted to the supervising agency which served as a code authority for the Rigid Steel Conduit Industry as a section of the National Electric Manufacturers Association by respondent Walker Brothers as a part of their price policy.

Mr. Gilpatric: Mr. Examiner, we cannot make any concession as to Walker Brothers. We do concede that both of these documents, Commission's Exhibits 89 and 90, were printed by the Youngstown Sheet & Tube Company.

Trial Examiner Norwood: Printed and circulated,
176 do you mean, among its customers?

Mr. Robison: What was the question?

Trial Examiner Norwood: Printed and circulated?

Mr. Robison: Yes, circulated to its customers.

Mr. MacIntyre: That applies as to the two of them?

Mr. Robison: No. I am not conceding the Youngstown Sheet & Tube Company circulated something with Walker Brothers' name on it, if that is what your question is.

Mr. MacIntyre: But your concession goes to the effect that they did publish both of them, Commission's Exhibits 89 and 90?

Mr. Robison: It goes to the fact that these two exhibits now marked Commission's Exhibits 89 and 90 are duplicates, in so far as the printed material is concerned, and that that printed material was prepared and printed by the Youngstown Sheet & Tube Company, and in that form was distributed to its customers.

Mr. MacIntyre: I offer Commission's Exhibit No. 89 in evidence at this time.

Trial Examiner Norwood: Is there any objection?

Mr. King: I would like to ask a question, if I might.

Mr. Stewart: You understand that there is no concession that the markings thereon are assumed to be correct, or that we assume any responsibility.

177 Mr. MacIntyre: I am offering Commission's Exhibit No. 89.

Mr. Stewart: They both have the stamp, "These prices effective January 28, 1934, by authority Supervisory Agency." We are not admitting the validity of that, or either one, or we are not admitting the origin of the Walker Brothers sticker on the document.

Mr. MacIntyre: That appears only on Commission's Exhibit No. 90.

Mr. Stewart: On Commission's Exhibit No. 90, I should say.

Mr. MacIntyre: I am offering Commission's Exhibit No. 89 at this time.

Mr. King: Iobject on the ground that it is duplication; as I understand it, the document is already part of whatever numbered document has been assigned to Youngstown Sheet & Tube Company; isn't that correct?

Mr. MacIntyre: The booklet, as such, that is included in the record.

Mr. King: I object to the duplication.

178 Mr. MacIntyre: If your Honor please, the objection taken by Mr. King is very well taken. I concur in it thoroughly.

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I have attempted to avoid it coming up by proposing to all counsel in this case a matter of 30 days ago that they stipulate as to these delivery charge books as published, and used by one and all, contained identical material. In other words, there is no difference in the figures appearing in either, or the manner in which they are used, but for some unknown reason we have been unable to arrive at an agreement on that, so I thoroughly agree that there is an undue duplication, in fact triplication, and far beyond that, of charge booklets and freight rate compilations in the record, and we hope, before the record is closed, that we shall in some way find some way to arrive at a stipulation that will strike from the record a lot of material but not the fact that is shown by the material.

Trial Examiner Norwood: And you are offering this because of the different name on the book; is that right?

Mr. MacIntyre: And of the time of the publication and the manner in which it has been used. We will connect
179 it in a different manner from the ones that we will be able to connect the booklets with, that appear in Commission's Exhibit No. 73.

Mr. King: I would like to have the record straight. Do I understand Mr. MacIntyre withdraws Commission's Exhibit No. 89? He agreed with my objection, as I understood it.

Trial Examiner Norwood: No, he has not withdrawn it.

Mr. King: He still offers it?

Trial Examiner Norwood: Yes.

Mr. King: Then, my objection still stands.

Trial Examiner Norwood: I shall overrule the objection and receive the exhibit as marked, Commission's Exhibit No. 89.

COMMISSION'S EXHIBIT NO. 89 was offered and received in evidence.

Mr. Stewart: Well, do you make the same ruling with regard to the additional material on the document which has not been identified in any way? That is the point that I make.

Trial Examiner Norwood: Is that the only difference between it and the other?

Mr. Stewart: That is right. That is the only difference.

180 Trial Examiner Norwood: Well, you will have to identify it. I had lost sight of that. Yes.

Mr. Stewart: That is the point of it. It is the same book except for that addition.

Trial Examiner Norwood: Can you identify that material on the back?

Mr. MacIntyre: Yes, we will be able to identify that material.

Trial Examiner Norwood: Was this produced by these respondents?

Mr. MacIntyre: It was not produced here by one of the respondents, but respondent's counsel for that company has identified it as a booklet published by that company.

Mr. Gilpatric: We have also produced exactly the same book without the stamp as Commission's Exhibit No. 73.

Trial Examiner Norwood: He identified it as coming from his files, as marked.

Mr. MacIntyre: No.

Mr. Stewart: No, no. He assumed no responsibility. That was the point for the markings.

Trial Examiner Norwood: I beg the counsel's pardon. I will sustain the objection for the time being as to the markings on the outside.

Mr. MacIntyre: As to the rubber stamp on the outside, I am not offering it at this time, but I want it to re-
181 main upon the booklet until I make a further showing with respect to it.

Trial Examiner Norwood: Commission's Exhibit 89 is received in evidence with the understanding that the markings on the outside are not in evidence until identified.

We will take a five-minute recess.

(There was a short recess taken.)

Trial Examiner Norwood: Gentlemen, let us come to order.

You may proceed.

Mr. Houston: With reference to the papers which have been handed to the Reporter for marking, beginning with Commission's Exhibit No. 91, and extending to and including Commission's Exhibit No. 270, these are documents which I have certified in accordance with our stipulation with Mr. MacIntyre, and in accordance with the terms of the certification on each document.

Mr. MacIntyre: As the certifications appear on the reverse side.

Mr. Houston: Yes, on the reverse side in most cases.

Mr. MacIntyre: And as is further supplemented by

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stipulation of August 20, 1941, which is in the record of yesterday.

Mr. Houston: That is right.

182 Trial Examiner Norwood: The papers will be marked as Commission's Exhibits Nos. for identification, 91, 92-A and B, 93, 94-A and B, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109-A, 109-B, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122A, and B, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132-A, B, C, and D, and 133 to 270, inclusive.

(The documents referred to were marked for identification "Commission's Exhibits Nos. 91, 92-A, 92-B, 93, 94-A, 94-B, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109-A, 109-B, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122-A, 122-B, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132-A, 132-B, 132-C, 132-D, and 133 to 270," both inclusive.)

(There was a discussion off the record.)

Trial Examiner Norwood: As you through now, Mr. MacIntyre? Are you ready for the recess?

Mr. MacIntyre: I am ready to have about a half dozen more marked that I would like to get in with these numbers this afternoon.

Trial Examiner Norwood: You can't do it until you number those.

Mr. MacIntyre: I didn't understand. Perhaps we can't.

183 Trial Examiner Norwood: Well, you can't mark them until they get those others marked.

Mr. Houston: Might I make a statement for the record in my absence from the hearing tomorrow?

Trial Examiner Norwood: Yes.

Mr. Houston: It is my understanding that any objections which are made to the admission of any of these documents or any other objections will accrue to the benefit of the clients whom I represent.

Trial Examiner Norwood: That is correct.

Mr. McDaniel: If Your Honor please, I would like to say that my understanding is the same. I think it is going to be impossible for me to be here tomorrow.

Trial Examiner Norwood: Yes.

Recess until 10 o'clock tomorrow morning.

(Whereupon, at 3:05 o'clock p. m., September 16, 1941, the hearing was adjourned.)

188 PROCEEDINGS.

(Documents were thereupon marked for identification "Commission's Exhibits Nos. 271 to 286," inclusive.)

Trial Examiner Norwood: Hearing will come to order. Pursuant to adjournment on yesterday, the hearing in Docket 4452 is now reconvened at 10'clock a.m., in the office of the Federal Trade Commission Building, Sixth and Constitution Avenue, Washington, D. C.

The appearances are the same.

Counsel have submitted corrections to the record of the first day's proceedings and copies have been furnished to counsel for the Commission, and I shall ask counsel for the Commission if they have any corrections to offer.

Mr. MacIntyre: I haven't had the opportunity to examine them.

Trial Examiner Norwood: Well, if you have—

Mr. MacIntyre: As soon as we have the opportunity to examine them and discuss the same with the respondents' counsel we will give a reply.

Trial Examiner Norwood: Well, when you have, why, furnish the counsel for the respondents with copies and—

Mr. MacIntyre: I doubt if there will be any.

Trial Examiner Norwood: —as soon as counsel for the Commission furnishes me with that list showing which
189 ones he agrees to, then I will refer to the record and order the corrections made.

Now, on yesterday the record doesn't show that certain numbers were reserved for exhibits which were promised by counsel to be produced. These numbers are from 53, that is, Commission's Nos. 53 to 88. Wait a minute. Was that 88 or 89?

Mr. Robison: Eighty—

Mr. MacIntyre: Eighty-eight.

Mr. King: Eighty-eight.

Trial Examiner Norwood: Eighty-eight, yes. I see.

Mr. Robison: Yes, to 88, inclusive.

Trial Examiner Norwood: Yes. I just want the record to show that so that if the Docket is not clear about the situation they can find it out from the record. With respect to these proffers, Commission's Exhibits, for identification, 18-A to K, 19-A to G, 20-A to K, 21-A to D, 22-A to F, 23-A to H, 24-A to Z-3, 25-A to F, 26-A to D, 27-A to

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H, 28-A to I, 29-A to E, 30-A to Q, 31-A to G, 32-A to F, 33-A to K, the objections are overruled and they are received in evidence as marked. I refer to those engineer's reports and everything to which the counsel called my attention. They are not unduly long, and I think they might possibly be of use, and if it appears to the contrary at any time I shall strike them, but I am receiving all of these
190 minutes with the understanding that counsel will make some attempt to eliminate for the printed record when the case goes up to the court anything that isn't absolutely necessary. I think that these things are necessary for preliminary study by the Commission, but possibly when it goes up to the Circuit Court of Appeals they might, to great advantage, be eliminated.

COMMISSION'S EXHIBITS NOS. 18-A to 18-K, 19-A to 19-G, 20-A to 20-K, 21-A to 21-D, 22-A to 22-F, 23-A to 23-H, 24-A to 24-Z-3, 25-A to 25-F, 26-A to 26-D, 27-A to 27-H, 28-A to 28-I, 29-A to 29-E, 30-A to 30-Q, 31-A to 31-G, 32-A to 32-F, and 33-A to 33-K were offered and received in evidence.

Trial Examiner Norwood: Off the record now.

(Discussion off the record.)

Trial Examiner Norwood: Beginning with 91, now, what have you marked?

Mr. MacIntyre: Those exhibits that Mr. Houston identified on the record yesterday afternoon, as the record yesterday shows are numbered 91 to 270, inclusive. Now, we have some others marked this morning, 271 to 286—

Trial Examiner Norwood: What are they?

Mr. MacIntyre: —to which I want now to make reference.

Trial Examiner Norwood: Go ahead.

191 Mr. MacIntyre: I ask Mr. Stewart as to Exhibits 271, 272, 273, 274, 275, 276, 277, 278, and 279 if he will concede on the record that they are genuine—that is, photostats of genuine and authentic documents as they purport on their faces to be, and that they were written by those persons to whom—by whom they purport to have been written, and for him to also state that that is his certification on the reverse side of each as to the genuineness and authenticity of each.

Mr. Stewart: Well, I would go so far as to, of course, concede that this is my verification as to the authenticity and genuineness of the documents, and, so far as I am

concerned, there is no objection to their use, but as to who wrote them, since they are typewritten signatures in one or two instances, I can't say who wrote them. All I say is that I am not raising any question about it.

Mr. MacIntyre: In other words, you are raising no objection to the identification of the documents—

Mr. Stewart: No.

Mr. MacIntyre: —as being what they purport on their faces to be?

Mr. Stewart: That is right.

Mr. MacIntyre: And you have so certified the genuineness and authenticity of those?

Mr. Stewart: That is right. The only question I
192 raised was that I didn't want to concede who wrote them when they were typewritten signatures.

Mr. MacIntyre: I refer to Commission's Exhibits, for identification, 281, 282—change that to read 280, 281, and 282. I will ask counsel for respondents to agree and admit that the certifications as to the genuineness and authenticity of those documents as appearing on the reverse sides thereof are made by George Wick, Esq., counsel for respondent Garland Manufacturing Company.

Mr. King: While counsel are examining those documents, if your Honor please, I am not clear about Exhibits 91 to 270. I don't believe the record shows what they are other than some documents that have been identified by Mr. Houston.

Trial Examiner Norwood: 92 to 270.

Mr. King: I beg your pardon. 92 to 270.

Mr. Stewart: Those are the N. R. A. records. That is what these are part of.

Mr. MacIntyre: Now, off the record.

(Discussion off the record.)

Mr. MacIntyre: If your Honor please, with respect to Commission's Exhibits, for identification, 280, 281, and 282, the certifications on the reverse side of each as to their genuineness and authenticity is signed by Mr. George D. Wick, attorney for respondent Garland Manufacturing
193 Company, and I understand on the strength of my representation of that fact that respondents' counsel agree that it is such certification of Mr. Wick's.

Mr. Gilpatric: That is correct.

Mr. Stewart: I understand that Mr. MacIntyre procured them on my say so that Mr. Wick should certify them.

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Mr. MacIntyre: I now refer to Commission's Exhibits, for identification, 283 and 284. I will ask Mr. Robison if he will now state for the record that the certifications as to the authenticity and genuineness of those two documents as appearing on the reverse side were signed for Sullivan and Cromwell, attorneys in this case for H. G. Morrow.

Mr. Robison: Mr. McDaniel, who has appeared here until this morning for Spang Chalfant and Mr. Morrow stated to me before he left yesterday afternoon that this certification on these papers was made by a Mr. Eiler of Pittsburgh, acting for Sullivan and Cromwell in that behalf.

Mr. MacIntyre: Now, I make reference to Commission's Exhibits, for identification, 285, and ask Mr. Peyser if that is his certification on the reverse side as to the genuineness and authenticity of that document.

Mr. Peyser: Yes, sir.

Mr. MacIntyre: And with respect to Commission's Exhibit No. 286, for identification, I ask Mr. Pos-
194 kanzer whether the certification on the reverse side of that is as to its authenticity and genuineness.

Mr. Poskanzer: Yes, sir.

Mr. MacIntyre: If Your Honor please, I would now like to call as a witness at the instance of the Commission Mr. Vigman.

JOSEPH VIGMAN was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

Q. Mr. Vigman, will you please state for the record your full name.

A. My name?

Q. Yes.

A. Joseph Vigman.

Mr. Stewart: Now, keep your voice up so everybody can hear you.

Mr. King: Spell your last name.

The Witness: Joseph Vigman.

By Mr. MacIntyre:

Q. What is your occupation and business, Mr. Vigman?

A. I am in the electrical merchandising.

Mr. Stewart: Electrical what?

195 The Witness: Electrical merchandising.

By Mr. MacIntyre:

Q. Will you please describe that business just a little more for us.

A. We sell merchandise to the private trade and also to the Government, bidding on different requirements of the Federal Government and other departments, any departments of the Government which send their inquiries, we bid on their requirements.

Q. In connection with that business, do you buy and sell rigid steel conduit?

A. Yes, sir.

Q. And for how long have you been so engaged?

A. Oh, we have been engaged since 1919.

Mr. Stewart: Is that the name of his firm?

The Witness: No. At that time Home Lighting Company.

By Mr. MacIntyre:

Q. How long have you been operating under the name of the Home Lighting Company?

A. Since 1919, until 1938, about 1939, something like that.

Q. 1938 or 1939.

A. Yes.

Q. Under what name are you now operating?

A. Electrical Industrial Equipment.

196 Q. And where was the business of the Home Lighting Company located, and where is the business of the Industrial Equipment Company located?

A. 11 North Howard.

Mr. Stewart: What?

The Witness: 11 North Howard.

Mr. Stewart: Where?

By Mr. MacIntyre:

Q. Where?

A. Baltimore, Md.

Q. Did you, in connection with your business of buying and selling rigid steel conduit during the early part of the year 1935, at the time you were trading under the name of Home Lighting Company, have occasion to submit bids to agencies of the Federal Government?

A. Yes, sir.
Q. Did you submit a bid to the Panama Canal?
A. Yes, sir.
Q. Can you tell us whether or not you were low bidder, or what relation your bid was?
Mr. Stewart: I submit it is not the proper way to prove that. The question is whether he was the low bidder.
Trial Examiner Norwood: Show the two bids.
Mr. Stewart: Show what the bids are.
Trial Examiner Norwood: Show what the bids are,
197 I think you should.
Mr. Stewart: That is very easily done.
Mr. King: I object to it.

By Mr. MacIntyre:

Q. What was your bid to the Panama Canal Commission?
Mr. Stewart: I object to that.
A. I could not remember that. We have so many bids for the time we were bidding, all along, I could not tell exactly what particular bids—
Trial Examiner Norwood: Off the record.
(Discussion off the record.)
Trial Examiner Norwood: All right. On the record. Proceed.
Mr. MacIntyre: I would like to have some papers marked for identification as Commission's exhibits.
(The documents referred to were marked for identification "Commission's Exhibits Nos. 287, 288-A, 288-B, 289, 290, 291, 292, 293-A and 293-B.")

By Mr. MacIntyre:

Q. Now, Mr. Vigman, I will now ask you whether or not that you secured any award pursuant to your bid which was made at that time to the Panama Canal Commission.
Mr. Stewart: I object to that for the reason that it is not the best evidence.
Mr. MacIntyre: Well, if the man says it is within
198 his knowledge as to whether or not that he was informed by the Government that he was awarded the contract, can't he tell us?
Mr. Stewart: No, I say that is hearsay.
Trial Examiner Norwood: The objection is overruled.
Mr. Stewart: He could not be informed by the Government. He was informed by somebody, I don't know who.

Trial Examiner Norwood: Overruled.

Mr. MacIntyre: Please read the question to the witness.

(Question read.)

A. I did so.

By Mr. MacIntyre:

Q. Did you find yourself able to perform your contract pursuant to that award?

A. Not the—

Mr. Stewart: Just "yes" or "no," now.

Trial Examiner Norwood: Yes.

A. No.

By Mr. MacIntyre:

Q. Why?

A. Because the factory refused to ship on account of me being lower than the other bidders.

Q. In other words, you could not get the conduit to fill the order?

199 Mr. Stewart: Now, I submit I am going to insist when it comes to examination of witnesses, and you are going to find me on your neck all the time, if you do not stop leading the witnesses; let the witness say what he has to say.

Trial Examiner Norwood: The point is well taken.

Mr. Stewart: I understand that. I want to have my friend know.

By Mr. MacIntyre:

Q. How do you know you could not get the conduit from these manufacturers to fill the contract?

Mr. Stewart: He did not say that.

Mr. MacIntyre: I beg counsel's pardon. He said he could not get it from the factory.

Trial Examiner Norwood: He said he could not make the delivery.

Mr. Stewart: Let the record show what it shows as the witness' answer, and not what Mr. MacIntyre says it shows.

Will you read the answer of the witness, please.

(Answer read.)

Mr. MacIntyre: Well, will you read my last question?

(Question read.)

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By Mr. MacIntyre:

Q. Well, from any manufacture, I will amend it.
200 How do you know that you could not get the conduit from any manufacturers to supply them?

Mr. Stewart: Just a moment. I object. He did not say he could not get it from any manufacturer. He said he could not get it from the factory.

Mr. MacIntyre: If a factory is not the manufacturer I do not know what is.

Trial Examiner Norwood: I am going to ask the witness to explain why he could not get the conduit from the factory.

Mr. Stewart: That is what he said.

Trial Examiner Norwood: Explain that to us.

The Witness: You see, we send the order in to the regular source of supply from which we were buying at that time and they refused to ship us because the prices was lower.

Mr. Stewart: Now, I ask that the answer be stricken for the reason that there is no identification of the factory or the supplier.

Mr. MacIntyre: Give us time.

Mr. Stewart: And it is obviously hearsay because he is telling us what somebody in some other place told him.

The Witness: No, no.

Trial Examiner Norwood: I think he should tell us what factory he is talking about.

201 Mr. MacIntyre: We are coming to that, if Your Honor please, as fast as we can.

By Mr. MacIntyre:

Q. Now, will you tell us what factory it was involved, their source of supply?

A. Originally we sent the order to Cohoes.

Mr. Stewart: Cohoes?

The Witness: Yes.

By Mr. MacIntyre:

Q. Cohoes Rolling Mill Company?

A. Yes, at Cohoes, N. Y.

Q. Did you attempt after you did not get it from that company to secure the material from any other company?

A. Yes, we wired to the Austin of Chicago, M. B. Austin of Chicago, and they sent their reply they could not make shipment.

Mr. King: Just a minute. I object.

Trial Examiner Norwood: State your objection.

Mr. King: The objection is that the correspondence and wires are the best evidence.

Trial Examiner Norwood: Well, if it is shown that this was in writing.

Mr. Stewart: Well, he said they sent him a reply, so obviously—

Mr. MacIntyre: If Your Honor please, what can be
202 more within the field of admissions than for one of these respondents to tell the witness who is on the stand and subject to cross-examination that they were not going to send him this conduit.

Mr. Stewart: Well, that is not the point of the question.

Trial Examiner Norwood: That is not the point.

Mr. Stewart: The point is the witness said they replied and said they would not send it. Obviously, that leaves us at the mercy of the witness when he does not produce the reason. There may have been a good reason other than the one he gives. Let us have the writing.

Trial Examiner Norwood: What form was that reply in?

The Witness: In a letter.

Trial Examiner Norwood: Have you the letter?

The Witness: I have not got any letter. Mr. MacIntyre got some correspondence of mine.

Trial Examiner Norwood: Read that answer.

(Answer read.)

Trial Examiner Norwood: Well, have you the letter, Mr. MacIntyre?

Mr. MacIntyre: Yes, I have a letter and telegram.

Trial Examiner Norwood: Well, I think I will sustain the objection.

203 Let the witness identify that letter and introduce it.

Mr. MacIntyre: If Your Honor please, I now offer into evidence Commission's Exhibit, for identification—First, let me ask the witness a question about this, if I may.

Trial Examiner Norwood: Yes.

By Mr. MacIntyre:

Q. Mr. Vigman, I am showing you Commission's Exhibit, for identification, 288-A and 288-B. Will you please tell us what they are, if you know.

A. This was a telegram that we have sent to Austin asking him—

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Mr. Stewart: That is all. The document speaks for itself.

By Mr. MacIntyre:

Q. And what about Commission's Exhibit 288-B?

A. This is from Austin.

Q. In reply to your telegram?

A. Yes.

Mr. MacIntyre: I thank you.

Mr. Peyser: May I see it?

Mr. Stewart: Wait. He has not offered it yet.

Mr. MacIntyre: When we make the offer we will.

By Mr. MacIntyre:

Q. I now show you Commission's Exhibit, for identification, 291. Tell us what that is, if you know.

204 A. That is also confirmation they could not make shipment of material from Austin.

Trial Examiner Norwood: What is that? A letter from whom?

The Witness: Austin.

Trial Examiner Norwood: Yes. That is in reply to the other?

The Witness: It is following up that telegram.

Mr. Austin: What number was that, please?

Mr. MacIntyre: 291.

By Mr. MacIntyre:

Q. Mr. Vigman, I now show you Commission's Exhibit, for identification, 293-A and 293-B, and I ask you to tell us what those are, if you know.

A. This is where we placed the order with him. We have sent him the order and we told him to proceed with it.

Mr. Stewart: I don't know—

Trial Examiner Norwood: That is, you wired to them?

The Witness: Yes, we wired to them.

Mr. Taylor: Mr. Examiner, I do not think the witness ought to be allowed to read into the record the contents of a document which as yet has neither been qualified or offered in evidence.

Trial Examiner Norwood: No. I have been watch-

205 ing him there, and permitting him to testify just sufficiently to describe it; that is all that is necessary. I will so instruct the witness.

It is a telegram received by you from so and so, in reply to so and so; that is what he is giving.

Mr. MacIntyre: From Austin.

By Mr. MacIntyre:

Q. Now, you were subsequently advised by the M. B. Austin Company that they could not fill that order; is that true?

A. Yes, sir.

Q. Mr. Vigman, I now show you Commission's Exhibit, for identification, 289. Tell us what that is, if you know.

A. It is all in the same proceeding in regard to the conduit.

Trial Examiner Norwood: That is a letter you received?

The Witness: Yes.

Trial Examiner Norwood: From whom?

The Witness: From Cohoes.

Trial Examiner Norwood: Cohoes Rolling Mill Company?

The Witness: Yes.

By Mr. MacIntyre:

Q. Now, I show you Commission's Exhibit, for identification, 287. Tell us what that is, if you know.

206 A. This is also in regard to the bid, the contract.

Q. Is it a telegram that you received from someone?

A. I think the gentleman at that time was from the—what is the name—of the same company, from Cohoes.

Trial Examiner Norwood: That is about this same matter; is it?

The Witness: Yes, about the same matter.

By Mr. MacIntyre:

Q. I now show you Commission's Exhibit, for identification, 290, and ask you to state if you recognize that, and, if so, as what?

A. This is from the representative of Cohoes, from Philadelphia, in regard to that same deal.

Q. A letter to you?

A. Yes.

Q. Now, I will ask you, did you ever perform your contract with the Government under this contract?

Mr. Stewart: I do not understand that there was any contract with the Government as yet. I object to it.

Mr. MacIntyre: The witness testified earlier that he received the award from the Government. He placed the bid and received the award.

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Now, I think that we can assume that those facts, at least, establish some relationship between him and the Government, and I think it most certainly would be
207 recognized as some sort of a contractual relationship, a bid and award. The witness has given us the facts. I think I can so characterize them.

Trial Examiner Norwood: What do you have to say?

Mr. Stewart: I have always understood, while you may be awarded a contract the fact that you are awarded a contract does not make you a contractee with anybody. You have to have a contract before you are obligated to do anything. Therefore, I object. The question assumes a state of facts which has not been shown to exist.

Trial Examiner Norwood: Did you have a contract with the Government?

The Witness: The Panama Canal does not give any contracts. They issue an order. There is no contract except the official order.

Trial Examiner Norwood: In other words, they gave you a verbal order or a written order?

The Witness: A written order.

Mr. Stewart: Where is it?

By Mr. MacIntyre:

Q. Now, I will ask you, Mr. Vigman, did you ever find yourself able to, under the circumstances that have been described here this morning, fill the order that you received from the Panama Canal Commission?

Mr. Stewart: I object to that for the reason that
208 the witness has stated he received a written order. Certainly the order at least ought to be accounted for before we proceed any further with respect to it.

Mr. MacIntyre: I do not have the order.

Mr. Stewart: The point is, he may say he had an order and he may not have got an order. We do not know. The trouble with these men is they have vivid imaginations as to what happened.

The Witness: I beg your pardon.

Mr. Stewart: Where is the order? Do you have it?

The Witness: I was not told to bring it.

Mr. Stewart: You have it?

The Witness: We have it in the office.

Mr. Stewart: In your files?

The Witness: Yes.

Mr. Stewart: Then I object to any questioning in the absence of the production of the order.

Mr. MacIntyre: Well, if this man told us that he rode an automobile from Baltimore this morning he would have to bring the automobile in, I suppose, to show it to us that he did ride it.

Trial Examiner Norwood: I am going to overrule your objection and let him state whether or not he filled this order, and then if it is material, the terms of the order, I think we can get it.

209 Mr. Stewart: Well, now, may we have the question again, then?

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Stewart: Well, I submit obviously the form of that question is very objectionable.

Trial Examiner Norwood: Objection overruled.

Mr. Stewart: I don't know what the witness—or what the questioner has in mind, and I don't know that the witness knows what he has in mind.

Trial Examiner Norwood: Objection overruled. Go ahead.

The Witness: Answer?

Trial Examiner Norwood: Answer the question.

A. We filled partly by buying outside jobbers and the other part we have to let the Government buy in the open market and charge to us the difference in the costs.

By Mr. MacIntyre:

Q. That is, the difference in cost between what it would cost if they got it from you and what they pay you?

A. That is right.

Mr. Stewart: Now, Mr. Examiner, I suggest that Mr. MacIntyre be cautioned that the witness is testifying and not he. It does seem to me—

Trial Examiner Norwood: I don't think he was 210 harmfully leading there.

Mr. King: I move to strike the answer on the ground—

Trial Examiner Norwood: In the circumstances—

Mr. King: I beg your pardon.

Trial Examiner Norwood: —I think it should stand. Motion denied.

Mr. King: I beg your pardon, sir, for interrupting. I thought you were through.

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Trial Examiner Norwood: That is all right.

Motion denied.

Mr. King: I move to strike the answer on the ground that is not the best evidence to prove how the contract was filled partially by this witness and partially by somebody else.

Trial Examiner Norwood: Motion denied.

Mr. MacIntyre: Now, if Your Honor please, I am making reference to Commission's Exhibit, for identification, 287. I will ask Mr. Poskanzer if he recognizes the certification as to the genuineness and authenticity of that document as it appears on the face of it to be a certification made by him.

Mr. Poskanzer: Yes.

Mr. MacIntyre: If Your Honor please, I now offer into evidence Commission's Exhibits 288-A and B, 290, 291,
211 289, 287, 293-A and B.

Mr. King: May we have a few moments to look at those?

Trial Examiner Norwood: Yes.

Mr. MacIntyre: They have all been identified on the record.

Trial Examiner Norwood: Five minutes' recess.

(There was a short recess taken.)

Trial Examiner Norwood: Hearing come to order.

Any objection to the proffer?

Mr. Stewart: Oh, yes; numerous.

I move to strike out the oral testimony of the witness to the effect that the two factories named by the witness refused to ship the material to him covered by his testimony for the reason that the documentary evidence now offered by the Commission shows that is not the fact. The documentary evidence shows in the instance of the M. B. Austin Company that they offered to ship them the material without any strings attached to it in any respect. With reference to the Cohoes Rolling Mill Company, they offered to ship the material but were unable to do so by reason of restrictions of the N.R.A. supervisory authority, and, the N.R.A. at that time being a governmental agency in charge of and with the authority to prohibit shipments of material except under conditions required by the code, obviously
212 it was no fault of the Cohoes Rolling Mill Company that the shipment was not made to the witness.

Now, I should like, if you will, please, before you de-

termine definitely on the ruling, if you care to look at this—but I have stated the fact as shown by these exhibits. Now, if we are going to get into the question at this stage—I hope we are not because it does seem to me that the objection I have made and the motion I have made are obviously supported by these documents on that aspect alone, but if we are going to get into the question now as to whether or not what happened under the N.R.A. is going to go in evidence in this case, why, of course, that is going to present another consideration, but I submit that where the oral evidence of the witness is flatly contradicted by the documents which are offered in support of that oral testimony that the oral testimony should be stricken, and these documents show beyond any question that there was no refusal, as the witness said, to ship the material; that in one instance the company agreed to ship it or was willing to ship it and in the other it was willing to ship it but was stopped by the N.R.A. authority.

Trial Examiner Norwood: Well, I think this: If there is any question I shall examine the documents and give the witness a chance to explain statements.

Mr. Stewart: I am trying to put these in order for you. I think that is the proper order, sir.

213 Trial Examiner Norwood: And, as I understand it, you do not object to these—

Mr. Stewart: I haven't got to that point yet.

Trial Examiner Norwood: I will reserve ruling on the motion to strike the evidence there.

Are there any objections—

Mr. Stewart: And I object to the documents for the reason that, first, on their face they show simply a transaction as between this witness' company and the two particular companies in 1935, and there is nothing either in the testimony of the witness or any other fact that is now offered to show any connection between the two companies involved and the other respondents. It was purely a private, simple, single transaction. Now, as to—may I—if you are through with them?

Trial Examiner Norwood: I shall overrule the objection and receive the exhibits.

Mr. Stewart: We haven't objected yet as to the documents, sir. I would like to get those on the record at least.

Trial Examiner Norwood: I will reserve the ruling on your motion.

Mr. Stewart: Now, as to Exhibit 287, this is objected to for the reason that the document shows on its face a reference to another document which is not produced.

214 Further, it is a transaction between Mr. Hodkinson as an officer of the N.R.A. and Mr. MacFayden, and the respondents are in no way responsible for his actions.

As to Exhibit No. 289, this is objected to for the reason that it purports to be a reply to a letter of March 27th, which is not produced, and inasmuch as it is obvious that the letter is part of a chain, I submit that if you are going to offer in evidence a document you must offer in evidence the other document which is a part of it in order that one may understand the full import of the letter.

Now, as to Exhibit 290, it also refers to a telegram and a letter which are not produced, and without that the letter is not self-supporting.

Trial Examiner Norwood: You mean 290?

Mr. Stewart: 290; yes, sir.

Trial Examiner Norwood: Yes. All right.

Mr. Stewart: And with reference to Exhibits 288 and 293, which apparently are copies of telegrams, I don't understand that there has been any attempt to prove that these telegrams, the originals, were sent and received. I object on that ground.

Have you any objection?

Mr. King: Yes, I do.

Mr. Stewart: Go ahead, sir.

Mr. King: I object to all of the documents, if Your

215 Honor please, on the ground that they all, on their face, show that they related to a period of time when the National Industrial Recovery Act was in existence, and, therefore, the documents are incompetent, irrelevant, and immaterial, and in that connection I would like to earnestly call Your Honor's attention to the fact that the unconstitutionality of the N.R.A. has—furnishes no aid for the introduction of these documents because, as Your Honor well knows, there was another provision of the National Industrial Recovery Act which the court never did declare unconstitutional which exempted all transactions during the N.R.A. from the operation of this Commission or the Department of Justice under the Sherman Antitrust Act, and, having that in mind, I think the exhibits are clearly immaterial to support any of the issues in any way involved in this proceeding.

Mr. Peyser: Your Honor, in addition to the objections of Mr. Stewart and Mr. King, in behalf of M. B. Austin, the respondent affected by Government Exhibits 288-A, 291, and 293-A, I object to them on the specific ground that, on the face of it, it appears that they are in no way relevant or material to the issues involved in the complaint, and I request that Your Honor read specifically, I believe it is, Exhibit 293-B, which clearly indicates no refusal on the part of M. B. Austin whatsoever to make any delivery. It is wholly outside of the scope of the complaint and irrelevant.

216 I also object on the ground that the order, which is alleged to have been received, is not in evidence, and the telegram, 293-B, clearly refers to that order and the fact that the merchandise therein referred to would not be probably accepted by the Government. I urge you to read that telegram before ruling on these objections.

Trial Examiner Norwood: Any further objections? What have you to say to that, Mr.—

Mr. MacIntyre: If Your Honor please, I would like to call your attention to a few things about which objection has been raised.

Trial Examiner Norwood: All right.

Mr. MacIntyre: Mr. Stewart objected to Commission's Exhibit 290 because it refers to a letter and a telegram which are not incorporated in it apparently. However, I call your attention to Commission's Exhibits 289 and 287. They are the telegram and the letter which is referred to. They are in this offer.

I now refer you to—

Mr. Stewart: You are testifying; is that it?

Mr. MacIntyre: In so far as we can determine, they are the letter and the telegram.

Mr. Stewart: That is correct.

Mr. MacIntyre: And if there are any others, we don't know anything about it, Mr. Stewart.

217 Mr. Stewart: That is what I am objecting to. You are testifying.

Mr. MacIntyre: It is my contention.

Trial Examiner Norwood: You propose to show by this witness they are the ones referred to?

Mr. MacIntyre: The witness has already testified, if Your Honor please, that, in so far as he can recall, that they are, and it is my information that they are, based on

his testimony as well as information we selected when we were in the field several years ago.

Trial Examiner Norwood: I can't accept your testimony.

Mr. MacIntyre: No, but we can't account for the letter and the telegram in any other way.

Trial Examiner Norwood: All right.

Mr. MacIntyre: Now, referring to Commission's Exhibit 287, Mr. Stewart objects to that because it is a telegram from a Mr. F. C. Hodkinson. Well, Mr. Frank C. Hodkinson is a respondent here. At the time he sent this telegram, the genuineness of which isn't in question,—in fact it is admitted,—he was an agent for all of these respondents who are conduit sellers.

Mr. Stewart: That is not in the record, you understand. That is your statement.

Mr. MacIntyre: No, but—

218 Trial Examiner Norwood: You propose to show that?

Mr. MacIntyre: We will show that.

Trial Examiner Norwood: All right.

Mr. MacIntyre: And he was an agent for them at that time to carry on just such activities in restraining trade as this telegram shows on its face that he did in this instance; that is, of boycotting dealers and preventing sales to those who undercut prices, as shown by the price cards of these various people.

Mr. Stewart: If Your Honor please, I object to this.

Mr. MacIntyre: That is the purpose for which I am offering it at this time.

Mr. Stewart: If you are offering it for that purpose, I wish you would state it.

Mr. Peyser: Mr. Examiner, I thought we would refrain from entering into any oral argument and any long objections. I didn't point out to you any inferences which you could draw from this telegram because I didn't assume it was proper.

Trial Examiner Norwood: Yes.

Mr. Peyser: I feel Mr. MacIntyre is going beyond the limit.

Trial Examiner Norwood: I feel he didn't discuss it any more at length than Mr. Stewart. Of course, he went into the merits of his case there.

219 Mr. MacIntyre: Well, it is necessary to make an offer of proof in the face of the objections made, and I feel that is all I have done.

Trial Examiner Norwood: Have you completed your reply?

Mr. MacIntyre: My reply to those, except at this time we offer in addition Commission's Exhibit 292. We feel that the fact included therein—I mean as shown on the face of this letter has been covered by the witness' testimony, but in order to make it doubly sure that it is shown in the record we now offer the letter.

Trial Examiner Norwood: All right.

Mr. King: Now, with reference to the other exhibits—

Mr. Stewart: Was this another exhibit now?

Mr. MacIntyre: That is an additional offer to go along with these.

Mr. King: I object to all of the exhibits from 287 to 293—

Trial Examiner Norwood: Yes.

Mr. King: —on the ground that, in view of Mr. MacIntyre's statement, it is now encumbent upon him to prove the connection which he just argued to Your Honor before these letters are admitted.

Mr. Stewart: Now, frankly—I want you—

Trial Examiner Norwood: I beg your pardon. You 220 say that that is an objection?

Mr. King: Yes, Your Honor, and until that connection is proved I enter a further objection to these exhibits.

Trial Examiner Norwood: Any objection to the last proffer?

Mr. Stewart: Yes. I would like you to look at 292. It does seem to me that my original motion to strike out this testimony is supported by that exhibit for the simple reason that whatever this gentleman may say as to their reasons for not shipping to them, there is the reason, that they specified somebody else's material and they say, "What is the reason for giving you ours?"

Mr. MacIntyre: If Your Honor please,—

Mr. Stewart: Just a moment, if Your Honor please.

Trial Examiner Norwood: Let him finish.

Mr. Stewart: I submit that in the teeth of your own documents you can't have a man say that something else happened.

Mr. MacIntyre: If Your Honor please, I am merely offering this for the fact that there was a refusal to ship on the part of M. B. Austin Company, and for no other fact.

Mr. Peyser: It is not within the scope of the complaint whether they refused for any reason whatsoever. Austin gives a legitimate reason. It is not within the scope of the complaint.

221 Trial Examiner Norwood: Any further objections?

Mr. King: I haven't seen that.

Mr. Stewart: We are going to have that trouble all along.

Mr. Peyser: Without anything further, no inferences can be drawn from that letter.

Trial Examiner Norwood: Any further objections?

Mr. King: I have one, just one more.

Mr. Taylor: Mr. MacIntyre, did I understand you—what seemed to me to be in the nature of an argument to be in the nature of an offer of proof?

Mr. MacIntyre: I explained my offer a little more in response to Mr.—

Mr. Taylor: The Commission has an offer of proof? That is what I want to get clear.

Mr. MacIntyre: It is an explanation of my offer, in part at least, in reply to Mr. Stewart's argument.

Mr. Stewart: My recollection is—and may I refer to the record so that we have no difficulty about that—that Mr. MacIntyre made it perfectly plain that that is his offer of proof. He wanted to make sure that he had that offer in. I ask you to go back where Mr. MacIntyre made the speech as to the purpose of offering it.

(Record read.)

Trial Examiner Norwood: I will hear from Mr.

222 King on the objection.

Mr. King: I object to Commission's Exhibit 292, if Your Honor please, on the ground that I stated the objection to the other exhibits.

In addition, I object to Commission's Exhibit 292 on the ground that on its face it indicates that it is incompetent to prove any of the allegations of the complaint.

Mr. Gilpatric: Mr. Examiner, I should like to make this statement, I think it is unfortunate that we have two issues somewhat confused here. I mean the vulnerability of this particular evidence to these objections, and then this issue which is so fundamental in this case, namely, whether transactions required by or under authority of or in conformity with the N. R. A., are going to be admitted

as evidence in support of the findings in this case. Now, that is the issue I am particularly concerned with.

Trial Examiner Norwood: Now, the question is—

Mr. MacIntyre: If Your Honor please, there is one further statement I would like to make, and that is this, in reply to objections that have just been made. One is that some of these telegrams are in copy form. It is true they are. They are copies of telegrams that were sent to the M. B. Austin Company. We have attempted to get the originals from the M. B. Austin through Mr. Peyser, their attorney. They have not submitted them.

223 Trial Examiner Norwood: Well, there has been no objection on that point.

Mr. MacIntyre: Well, I submit that Mr. Peyser and Mr. King raised that objection.

Mr. Peyser: What objection is that?

Mr. MacIntyre: And yet they have it in their power as far as it is in their power, or the power of anyone, to submit the original. We haven't been able to get them. We are doing the best we can through copies.

Mr. Peyser: If Your Honor please, that is an incorrect statement. I did not object on the ground they are copies; I did not make any such objection.

Mr. MacIntyre: Well, then Mr. King.

Mr. Peyser: In an effort to obtain documents, I stated to Mr. MacIntyre in reply to his request that Austin Company has a practice of destroying records every four or five years. They do not retain records.

Mr. MacIntyre: One last point in regard to the argument of counsel for Youngstown Sheet & Tube, about this fundamental issue of the N. R. A.

If it was a matter of complying with the law probably we could consider the argument that has been raised, but when restraint of trade, such as is involved, as charged in this complaint, and such as this proof that we are now offering establishes, there can be no question about

224 any period of the N. R. A. offering any obstacles to the receipt of such evidence here, and that has been made doubly clear by the Supreme Court in the Madison Oil case as decided on May 6, 1940.

Mr. Stewart: Well, now, of course if we are going into that argument, let us adjourn and take a little recess.

Trial Examiner Norwood: I don't think we are.

Mr. Stewart: No.

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Trial Examiner Norwood: I will say this, we have had this N. R. A. question up many times, and always under these charges of restraint of trade it is always the question of whether companies operating under codes exceeded their authority, and it is necessary to admit the facts in order to determine whether or not they did exceed their authority, and it may be necessary to receive facts concerning transactions during the code period in order to show or to explain what happened thereafter, or what happened prior to that time. So I shall not exclude any evidence that is offered purely on the ground that it is covered by the code periods.

Mr. Stewart: Well, I should like to be heard on that in order that we may not be understood as acquiescing in that ruling.

Our position, of course, is that what you are compelled by law you do, you do, and you are not to be hailed before some other tribunal and charged with a violation of
225 that law when especially your code showed that you obeyed the code, that you are not violating either the law, which we are charged with violating here, or any other law tending to create monopolies or involving discriminations.

Now, in the first place, I should think if we are going to go into that the code should be put in evidence so we know what we are talking about; if it is a question of exceeding the code then we ought to know what the code required, but as the record now stands with reference to this transaction, the presumption is a Government agent obeys the law, and neither Mr. MacIntyre or anybody else by the use of highly colored phrases can make a bit of difference in what Mr. Hodkinson did. The fact was that he was the supervisory agent under the N. R. A. code charged with a particular duty, and in this situation he undertook to exercise his authority.

Now, it is just Hornbook law that a Government agent is presumed to obey the law, and if Mr. MacIntyre can show he disobeyed the law that is another matter. But Mr. Hodkinson was not our agent--at least there is no proof here that he was. Now, that is the point that we are troubled about at the moment.

Mr. MacIntyre: We are certainly contending that he was no agent of the Government, and we are certainly contending that the things that are shown by these ex-

hibits, that he did, were not within the law, N. R. A. or not.

226 Mr. King: To save time, Your Honor, might I have, in behalf of Clayton Mark, a standing objection to all the documents that indicate on their face they have any relation to the N. R. A. period?

Trial Examiner Norwood: Counsel may.

Mr. King: For the reason I stated, and as stated here.

Trial Examiner Norwood: And all the other respondents may have an exception.

Mr. King: That will save a lot of time.

Now, I have one further objection, I omitted to make to all these letters, namely, Commission's Exhibits 287 to 293, and that is that they are objectionable on the ground that Mr. MacIntyre has attempted to impeach his own witness without laying the proper foundation.

Mr. Stewart: Just so we have the matter clear, you see what I am trying to point out—I am not trying to keep an argument—

Trial Examiner Norwood: The question is, however, there is a question which may be raised, and is raised in these cases, as to whether the code was legal. A great many of those codes went further than the Act.

Mr. Stewart: Well, but, as I understand, that at least my position with regard to that—

227 Trial Examiner Norwood: And then the question whether the code went further than that, whether they violated the code—now, all that we can do, when the facts of all these transactions are received, I can only determine whether these papers contradict the witness by a study of them, after they have been received in evidence.

Now, the counsel may just as well make up their minds that this is an investigation, it is not a trial before a jury. We are not going to apply strict technical rules of evidence where the reasons behind the rules do not obtain, and these papers should be admitted for study.

Mr. Stewart: That is quite—I have no quarrel with that, and I am not attempting to insist—

Trial Examiner Norwood: And these papers will have to be admitted before this witness can explain them.

Mr. Stewart: Well, I am not quarreling with the idea that this is an administrative proceeding, and we are not attempting to adhere to strict rules of evidence. What I am insisting upon, and I do it with the utmost deference,

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of course, that we be given a fair hearing, and I know we will get one, and what I am quarreling about is that Mr. MacIntyre uses a telegram from a man over whom we have no control—I am just using this as an illustration—by the bald assertion that he was our agent, and there is not a word of evidence in this record to show that he was an agent of the respondents. Now, this is back in 1935,
228 during the code, and there is not a word in this complaint—

Trial Examiner Norwood: He will have to show that.

Mr. Stewart: Yes. That is just it. But there is not a word in this complaint about the violation of the code, and, surely, if you are going to suggest, or if Mr. MacIntyre is suggesting we violated the code, you at least ought to put the code in evidence so we will know where we are.

Trial Examiner Norwood: Well, we have, as I understand it, considerable information to put in here, and you have to put it in, some of it, before you put in the rest.

Mr. Stewart: I know, but on a question of this sort it seems to me we ought to be orderly about that, if Mr. Hodkinson is our agent under the code, let that be established but don't do it backwards and put us in that position.

Trial Examiner Norwood: Well, you are raising this question about the code.

Mr. Stewart: Yes, certainly, because we want to protect ourselves at this stage. We do not want to appear to be acquiescing in the ruling that whatever happened under the code goes in without objection.

Mr. Gilpatric: In that connection, Mr. Examiner, may I at this point reserve our right, when sufficient of this material which bears on this question of the code is offered so that you and the Commission have enough material to go into the question, our right to move at that time to
229 get this very fundamental question determined before we go on and take all the proof that is involved in going into that period?

Trial Examiner Norwood: You may make an interlocutory appeal to the Commission on that question, if I overrule your objections and receive these documents, as I am going to do. Then, you can file with the Secretary a request to hear you on an interlocutory appeal from my ruling in that manner.

Mr. Gilpatric: But my predicament is that I honestly do not feel that such an appeal based on those few documents would prevail because there is not enough for the Commission to get the picture.

Trial Examiner Norwood: Well, you have the right at any time to make that motion on appeal to the Commission.

I shall overrule the objection and receive the exhibits as marked. Let the witness explain them.

COMMISSION'S EXHIBITS NOS. 287, 288-A, 288-B, 289, 290, 291, 292, 293-A and 293-B, were offered and received in evidence.

Mr. Stewart: Then, I would like to cross-examine.

Mr. Austin: If Your Honor please, just for one time today I assume these are admitted subject to a connection with the Electrical Wholesalers Association.

Trial Examiner Norwood: That is true.

230 Mr. King: That assumption would apply to all respondents, wouldn't it?

Trial Examiner Norwood: Yes. All respondents. It is there, that nothing is to be held against any respondent until he is connected with it.

Mr. MacIntyre: If Your Honor please, I tender the witness for cross-examination on the record.

Trial Examiner Norwood: Proceed.

Cross-Examination by Mr. Stewart.

Q. Mr. Vigman, your company was formerly Home Lighting Company?

A. Yes, sir.

Q. And it is now Electrical Industrial Company?

A. Yes, sir.

Q. Is it a corporation?

A. Yes, sir.

Q. Was the Home Lighting Company a corporation?

A. Yes, sir.

Q. And did you handle this transaction yourself?

A. Yes, sir.

Q. Did you send these telegrams?

A. Yes, sir.

Q. Is there anything outside of these documents which have been offered in evidence which throws any light

231 on these two transactions, or this transaction you are testifying about?

A. In regard to the exhibits or—

Q. The whole transaction.

A. Well, there might be some more, but I was not told to get any evidence, except to appear today, and I just went as it was. It is 7 years already.

Q. Yes. As a matter of fact, your recollection is pretty vague about—

A. No, it is not vague. It was a long time ago. I could not say word for word exactly what the transaction was at that time.

Q. Do you think you might be mistaken in some respects about it?

A. Well, I do not know what I could be mistaken. It could be; anybody can be mistaken.

Q. Is there anything other than these documents which you might have up there which would throw any light on this transaction?

A. Possibly, if I go through the papers.

Q. Will you look through the papers?

A. If I can find enough papers.

Trial Examiner Norwood: Could you find that order?

The Witness: I guess I could; not sure. But we keep generally the papers for a long time.

By Mr. Stewart:

232 Q. Well, who investigated this transaction in your company?

A. What do you mean, who investigated?

Q. Who of the Federal Trade Commission?

A. I could not remember exactly. Mr. MacIntyre was there once, I believe somebody else.

Q. Did you give them access to all your papers?

A. To the papers they have at the present time handed me. I did not go all the way through. They asked me they take any letter.

Q. Well, you knew you had other papers concerning this.

A. I could not say they had any bearing on the case, or they did not. See, we got lots of correspondence but sometimes it have no bearing on the correspondence some way.

Q. Where is the order?

A. I got the order. The order was there, but I don't brought anything. I was not told to bring anything. I just had a subpoena and I appeared.

Q. Well, these papers have been in the possession of Mr. MacIntyre?

A. Yes, sir.

Q. But you did not give him the order?

A. No, I did not give him the order.

Q. Now, what I want to ask you is, what else is there outside of these documents which tells why it was you did not get the conduit from either Cohoes or Austin?

233 Is there anything else?

A. I could not say at the present, because I say, 7 years—if I go through the correspondence again I might find anything bearing on it. I could not just say at the present time.

Q. All right. Except as you may find further information throwing light on the transaction, these documents give the reasons for your failure to get the material from Austin and Cohoes?

A. That is all the transaction, the transaction bearing on that order.

Q. Everything is in these documents?

A. I could not say everything, because, I say I don't remember if I got all the papers or not.

Q. Well, I said to you other than what you may find.

A. Yes.

Q. These documents show the whole transaction and the reason you did not get the material; isn't that right?

A. I would not say all. If I have any more, I could not say all, but at the present time that is the papers I have concerning that transaction.

Mr. Stewart: Will you read the question, please.

(Question read.)

By Mr. Stewart:

Q. Now, do you understand me?

A. I understand you.

234 Q. Is it your statement you may find some other document which throws light on the transaction?

A. Yes.

Q. What I am asking you is, don't these documents show the whole story as to why you did not get the material?

A. If there are no more, yes; if there are no more.

Q. All right.

Mr. Stewart: Go ahead, you fellows, if you want to ask him any questions.

Mr. King: I have no questions. I only have the request that the witness be instructed by Your Honor to produce what he calls the order and what I would refer to as the contract.

Trial Examiner Norwood: Yes. I do so instruct him.

The Witness: If possible, I will try.

Mr. Stewart: Well, you can send it to Mr. MacIntyre. You do not have to bring it back.

Mr. MacIntyre: If Your Honor please, we propose to have information of a better character concerning this man's bid and award made to him, and I therefore ask that Your Honor not instruct the witness to go to any trouble in making another trip from Baltimore to Washington for that purpose.

Mr. Stewart: I just said he may send it to the Examiner or to Mr. MacIntyre.

235 Trial Examiner Norwood: Yes, you send it to me.

Mr. MacIntyre: That is the order that he submitted to the companies, or the Government submitted to him?

Mr. Stewart: Well, let us understand each other.

Mr. King: Both.

Trial Examiner Norwood: Describe exactly what you want.

Mr. Stewart: Let us understand each other.

The Witness: Yes.

By Mr. Stewart:

Q. You say you received an order.

A. That is right.

Q. From the Government.

A. That is right.

Mr. Stewart: We want that order, the document.

The Witness: Who should get it?

Mr. Stewart: Mr. Norwood, the Examiner.

Trial Examiner Norwood: I will give you a franked envelope to mail it in.

The Witness: All right.

By Mr. Stewart:

Q. Now, then, if you discover any other documentary evidence bearing on this matter, also include that.

Now, do we understand each other?

A. Yes, sir.

236 Mr. Stewart: Thank you.

Mr. MacIntyre: Is the cross-examination completed?
Mr. Stewart: I don't know.
Trial Examiner Norwood: Is there further examination?
Mr. MacIntyre: I would like to ask the witness a question or two.

Redirect Examination by Mr. MacIntyre.

Q. Mr. Vigman, Mr. Stewart asked you if you could possibly be mistaken about this transaction.
Mr. Stewart: I did not ask him that, I submit.
Mr. MacIntyre: I beg to differ. I think the record will show.
Trial Examiner Norwood: He asked if he could be mistaken.
Mr. Stewart: Yes; not possibly.

By Mr. MacIntyre:

Q. If you could be mistaken about this.
Are you absolutely sure that this transaction as you have been describing here this morning actually took place?
A. Yes, sir.
Mr. Taylor: I object to that. I think he is cross-examining his own witness.
237 Trial Examiner Norwood: Overruled.

By Mr. MacIntyre:

Q. And I will ask you further as to whether or not you are absolutely positive that Commission's Exhibits 292, 290, 291, 288-A and B, 293-A and B, 287, and 289 are documents relating to that transaction?
Mr. Poskanzer: I object to that, if Your Honor please, as a matter already gone over and not a proper subject for redirect examination.
Mr. Stewart: I submit the documents speak for themselves.
Trial Examiner Norwood: Overruled.
Let the witness answer.
Mr. MacIntyre: Please read the witness' answer.
A. Yes, sir.
Mr. Poskanzer: I object further on the ground the question calls for a conclusion of the witness and as invading the province of the Trial Examiner.

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Mr. MacIntyre: May I ask that the witness' answer be read?

(Answer read.)

Mr. MacIntyre: That is all

Trial Examiner Norwood: Do you wish to ask him any questions, Mr. Poskanzer?

Mr. Poskanzer: I wish to join in the previous mo-
238 tion, and to supplement it by now striking out the entire testimony on the ground the exhibits in evidence are inconsistent with the oral testimony.

Trial Examiner Norwood: The motion is denied.

Proceed.

Are you through with this witness?

Mr. MacIntyre: That completes my examination.

Mr. Stewart: Yes.

Mr. King: Might we have a five minutes' recess, Your Honor?

Trial Examiner Norwood: Yes. We will take a recess for five minutes.

(There was a short recess taken.)

Trial Examiner Norwood: Let us come to order, gentlemen.

You may proceed.

Call your next witness.

Mr. MacIntyre: If Your Honor please, I would like to make this request on the record before proceeding, and that is that wherever we have documents that are produced here by respondents or otherwise, by respondents pursuant to subpoena duces tecum, or notices to produce, or otherwise, that when they are marked that each page be given a subletter except in those instances where there is
a document that is firmly, securely, and permanently
239 bound, carrying more than one page, and even in that case except where pages are clearly designated and numbered as pages of such booklet. I understand, of course, there are certain rules in the Reporter's contract that cover this, but I would like to request of Your Honor that the interpretation as to the manner in which that should be complied with be as I have requested.

Trial Examiner Norwood: If it is a bound pamphlet, or book, with numbered pages, or has numbers printed on it, it will not be necessary to letter those pages, but I do like the record to show the number of pages. It helps to identify it; but otherwise, for instance, a letter of several

pages, or something like that, although it may be attached by a clip the pages shoud be lettered, too.

I think that is clear. I will accept that.

Mr. MacIntyre: Once, of course, a document such as a booklet is submitted to the Docket Section and is permanently bound, that is securely and firmly, it will not be separated, and there would be no use for that; but if it is not firmly, securely, and permanently so bound, then I request that each page be numbered.

Trial Examiner Norwood: Well, in the case of a large number of invoices, and things like that, we have heretofore utilized the numbers on them, and stated that the numbers ran between such and such numbers, and named the first and the last number in the series. We will
240 probably not have that in this case.

Go ahead.

Mr. MacIntyre: Now, if Your Honor please, on the strength of the identification of the genuineness, the authenticity of certain documents to which I am going to make reference, as is shown by the record, and pursuant to stipulations which now appear on the record at pages 16, 21, 27, and 29, I offer the following documents in evidence:

Commission's Exhibits 91, 92-A and B, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 112, 113, 114, 119, 120, 121, 122-A and B, 123, 124, 125, 126, 127, 128, 129, 130, 131, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 153, 154, 155, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 282, 283, 284, 281.

Trial Examiner Norwood: Wait a minute.

241 Mr. MacIntyre: 286 and 285.

Trial Examiner Norwood: Wait a minute. Did you skip one in there anywhere?

Mr. MacIntyre: 281 is in here.

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Trial Examiner Norwood: Yes. Then that goes from 157, then, to 286 without a break; is that the way you checked it?

Mr. King: That is the way I checked it, sir.

Trial Examiner Norwood: Thank you, sir.

Mr. Stewart: Well, now, I haven't conferred, Mr. Examiner, with my colleagues on this present situation, but, speaking for myself, I would like to adjourn until tomorrow morning so that we can have an opportunity to examine these documents which, as I recall it, are almost 200. I don't know else we can find out what is in them except sit down and read them because we don't have copies of them.

Trial Examiner Norwood: Do you have photostats of these?

Mr. Stewart: No. We have asked for them and Mr. MacIntyre—

Mr. MacIntyre: We have photostats of all of these documents except the photostats of a few of them which we have already given to Respondent's counsel. I refer particularly to Mr. Poskanzer, Mr. Peyser, and Mr. Tucker.

We have photostats of all except those that we have 242 already given them.

Mr. Stewart: We have seen those, then.

Mr. MacIntyre: And we have an arrangement worked out whereby we will be able to supply those photostats that we have for the consideration and study of counsel for the respondents this afternoon and tonight so that you may keep these for your study.

In connection with my offer on these, I would like to say this: That we feel that these are relevant and material, that is, competent, relevant, and material. Identification is already established. The authenticity is established by admissions and agreements, and as to the relevance and materiality I would say this: That, taken as a whole, they show that respondent, Frank C. Hodkinson, operated as a part of this conspiracy in carrying out the conspiracy for the other respondents, or at least parts of it, at their instructions and at their request in efforts to see to it that the respondents as well as others maintained not only in the first sale of rigid steel conduit but even in resales of rigid steel conduit by jobbers the published prices as announced by these respondents in their price cards the numbers for which already have been given by Your Honor to certain Commission's exhibits; that in doing so he went

so far as to request that sales not be made to particular jobbers and other tradesmen in conduit because they
243 had cut prices, and that he investigated instances where certain of these respondents claimed that certain people had cut prices and reported back to them what he had found, and, in fact, took other action to prevent a recurrence of such price cutting. He admitted, as is shown by Exhibit 243, to some of the respondents that he was doing it without authority of law and he doubted, as is shown by 265, that he could be successful, or even that the respondents themselves should expect him to be successful with such a job as they had imposed upon him.

Mr. Stewart: I am just wondering if this is an offer of proof or an argument.

Mr. MacIntyre: That is what I am expecting for the Examiner to find from the evidence so as for him to determine that they are relevant and material to the issues here.

Mr. Stewart: It sounds to me like an argument instead of an offer of proof.

Mr. MacIntyre: It is an offer of proof.

They will show in some instances here some of these respondents were offering to sell to certain jobbers and wholesalers; that the names of those jobbers and wholesalers were brought into question and investigated collectively, if you pease, for the purpose of determining whether or not they fitted that designation and should be so sold at jobbers' discounts.

244 Trial Examiner Norwood: You say they shouldn't be permitted to do that?

Mr. MacIntyre: I didn't understand.

Trial Examiner Norwood: Do you contend they shouldn't be permitted to do that?

Mr. MacIntyre: It is the charge of the Commission in the complaint that that is one of the unlawful activities of these respondents.

Trial Examiner Norwood: Go ahead.

Mr. MacIntyre: It is our further contention that these documents, when taken as a whole, begin to disclose for the record here the general purpose of these respondents to maintain prices as published by their price cards in this industry, and that purpose will be added to by other evidence as we go along, but this is a partial showing of that general purpose on their part to restrain competition in price through attempts to maintain their published price

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cards. It is our further contention that Mr. Hodkinson, in acting in this connection, he and the others, as parts of this conspiracy, did so without any authority under law and—or, for that matter, any authority under any claim of law such as N. R. A. codes.

I will make arrangements with Mr. Calhoun for him to turn over to respondents' counsel the remaining copies, that is, photostats of these documents, and we should, before the end of the lunch hour, have those ready
245 here. The respondents' counsel, in fact, can work with him in taking the copies to be sure that they have all that we have of them.

Mr. King: Are the copies marked, Mr. MacIntyre?

Mr. MacIntyre: We can arrange for you to mark them. We have a filed page number on these as well as the identification mark by the Reporter on the back.

Mr. King: If that is true, Your Honor, I suggest that if it is not too much inconvenience to Mr. Stewart—I beg your pardon.

Trial Examiner Norwood: I was speaking to Mr. Taylor.

Mr. King: Excuse me.

Trial Examiner Norwood: I will hear from Mr. Taylor.

Mr. Taylor: Mr. Examiner, I wish at this time to make a motion to strike the remarks of Mr. MacIntyre from the record which have just been made on two grounds. One on the ground that it is characterized by Mr. MacIntyre as an offer to prove. Obviousy it is an argument and an interpretation of documents not presently in evidence; and on the second ground that the entire—even as an offer of proof they presuppose a demand for the offer of proof and objection to which at this time has not been made. Consequently, coming at this time they are objectionable on that ground.

Mr. MacIntyre: If Your Honor please, an offer of
246 proof is a privilege that need not be asked for.

Trial Examiner Norwood: I think it is indeed helpful to all of us to know what he is proposing to show by these papers, and, as we have no jury in the case here and we are all experienced in looking for facts and weighing them, there can be no prejudice to this problem that the counsel has claimed that they show so and so, whether they do or don't. The statements of counsel are not considered as evidence in any way whatsoever, so I shall deny counsel's motion, but a contrary statement may be made by

any of the counsel with respect to these papers, and unquestionably there will be a contrary statement made when they study them. In stating their objections to these papers they will probably make arguments in direct contrast.

I will hear from Mr. King.

Mr. King: I was just going to say that I am vitally interested in seeing these documents the offering covering which has just been made, and if the photostats are not numbered I would suggest that it is much quicker for counsel to look at the documents with the original number on them rather than photostats, copies of which Mr. MacIntyre has.

Mr. MacIntyre: If Your Honor please, comparable file numbers appear on both the offered documents as well as their photostatic copies of the same, and if we want to tie those up tighter so that it would be absolutely clear to
247 respondents' counsel we will do that during the lunch hour so that we will have a duplicate identification number on it as well as the file number.

Mr. King: I want to look at the identification number, Mr. MacIntyre.

Trial Examiner Norwood: What is the counsel's reaction to Mr. Stewart's motion to adjourn until tomorrow morning? Have you something we can do this afternoon?

Mr. MacIntyre: Well, if respondents' counsel feel that it will take the afternoon for them, and probably the evening for them to study these before making their objections tomorrow morning, I have no objection to an adjournment for that purpose until 10 o'clock tomorrow morning.

Mr. Stewart: I certainly wouldn't undertake to study these in an hour and a half, 200 documents.

Trial Examiner Norwood: Yes. Of course we have—

Mr. Stewart: I don't know what the other gentlemen wish. I haven't heard anybody dissent.

Mr. Austin: I would just as leave go on this afternoon.

Trial Examiner Norwood. The counsel will have a certain amount of time this evening.

Mr. Stewart: Of course, it doesn't affect you.

Mr. Gilpatric: But let us go off the record on all this.

248 Trial Examiner Norwood: The hearing is recessed until 10 o'clock tomorrow morning.

(Whereupon, at 12:20 o'clock p. m., September 17, 1941, the hearing was adjourned.)

251 PROCEEDINGS.

(Documents were marked for identification "Commission's Exhibits Nos. 45 and 49-A to 49-E," inclusive.)

(Commission's Exhibits Nos. 53 to 71, both inclusive, 76, 78, and 81 to 88, both inclusive, were reserved for documents to be produced by the Respondents.)

Trial Examiner Norwood: Pursuant to adjournment on yesterday, the hearing in Docket No. 4452 is reconvened at 10 o'clock a. m., September 18, Room 332, Office of the Federal Trade Commission, Washington, D. C.

Please note the appearances.

The Reporter is instructed to note each day the counsel who are present at the hearing only. The other counsel which they have set forth at length are carried in the record as appearing in the case and they will appear at the hearings from time to time, but the daily reports will show the names of the counsel present and in parenthesis the Reporter may put their firm names, and it will be understood that such counsel are appearing for the respondents heretofore set out in the record unless some change is ordered, so the names of the respondents in connection with the counsel need not be copied into the record.

252 Now, I have one list of corrections here that have been approved by counsel on both sides, but I simply want to take up one place in the record for a number of these, and I suppose Commission's counsel has not had time to check the others. We will probably want over the week end to do that.

Is that correct, Mr. MacIntyre, do you want over the week end to check all the proposed corrections up to date?

Mr. MacIntyre: There are some which have just been submitted to me which are on my table. I have not seen them.

Trial Examiner Norwood: Well, I will reserve the corrections until more of them come in.

You may proceed.

Now, I am ready to hear the objections to the proffer.

Mr. Stewart: Well, now, Mr. Examiner, may this be off the record, because it is simply an explanation.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Call your witness, Mr. MacIntyre.

Mr. MacIntyre: I now call as a witness Mr. Dell, at the instance of the Commission.

Trial Examiner Norwood: Yes. Call Mr. Dell.

HERMAN B. DELL was thereupon called as a
253 witness for the Commission, and, having been first duly sworn, testified as follows:

Trial Examiner Norwood: Proceed.

Direct Examination by Mr. MacIntyre.

Q. Mr. Dell, what is your business or occupation?

A. Award clerk for the Panama Canal.

Mr. King: Off the record.

(Discussion off the record.)

By Mr. MacIntyre:

Q. How long have you been so engaged in that position?

A. Well, I have been engaged continuously since 1932. I was also on that job several years previously.

Q. Well, will you describe briefly for the record your duties in that position.

A. I have charge of the opening, public opening of bids submitted to the Panama Canal under Panama Canal schedules. After the bids have been opened, at the time of opening bids, we prepare official abstract of bids submitted, recorded as they are read, and after the bids have been opened we proceed to canvass the bids on the basis of the abstract made at the time of the public opening. After examination of low bids under each class we make awards by classes, and if the low bid under a class is found
to be in accordance with the conditions and specifica-
254 tions of the advertisement we make the award. If not, we continue canvassing the bids until we arrive at the lowest bidder in accordance with the specification requirements.

Q. Mr. Dell, you have spoken about your being employed by the Panama Canal. Is that the full name of the agency?

A. The Panama Canal, capital letter "The."

Q. And in order that the record may show, is that an agency of the United States Government?

A. It is. Referred to as an independent establishment.

Q. And when you speak of your duties as you have in connection with the handling of bids, and awards, what products and commodities are involved in such bidding and awards?

A. We handle everything from pins to locomotives.

Q. Is rigid steel conduit included as one of those commodities?

A. We make regular stock purchases of steel conduit, both enameled and galvanized.

Q. Now, in handling your duties as you have described them during the year 1935, did you have anything to do with the opening of bids and the handling of awards on Schedule 3028, which bids were opened February 11, 1935?

A. I did. I read the bids at the opening and the award was made on my desk.

Mr. MacIntyre: I would like to have some papers here marked for identification as Commission's exhibits.

255 (The documents referred to were marked for identification "Commission's Exhibits 294-A to 294-Z, 295-A to 295-A to 295-Q, 296, 297-A, 297-B, 298, 299, 300, 301, 302, and 303.")

Mr. MacIntyre: May we proceed?

Trial Examiner Norwood: Proceed.

By Mr. MacIntyre:

Q. Mr. Dell, I show you Commission's Exhibit, for identification, 294-A to Z, inclusive, and ask you to state whether you recognize that, and, if so, as what?

A. That is my working—

Mr. Stewart: Now, after all, instead of taking all this time asking the man about what I suppose are official papers, nobody is going to raise any objection. If the man says those are the official advertisements or awards or bids or what not, you don't need to go into all this detail. We are not going to question them.

Trial Examiner Norwood: Well, he is simply identifying them in the simplest way.

Mr. Stewart: We are making no objection to them.

Trial Examiner Norwood: Let the record show what they are.

Mr. Stewart: If they are offered in evidence, we want to show what they are.

Trial Examiner Norwood: Proceed. These must
256 be identified as such.

Mr. MacIntyre: Unless they are admitted.

Trial Examiner Norwood: As official papers.

Mr. Stewart: Well, if you will let me see them maybe I will admit them. I can't tell what they are from here.

Mr. MacIntyre: I will try to save questions and answers by asking respondents' counsel if they will admit and concede that this witness will identify Commission's Exhibits 294-A to Z as the proposals for bids on this schedule 3028, the bids for which were opened February 11, 1935, by the Panama Canal.

Mr. Stewart: All right.

Mr. King: Wouldn't we save time in having them just say they are?

Trial Examiner Norwood: I thought so.

Mr. MacIntyre: I just want the record to show an admission or testimony, either one, whichever is the shortest.

Trial Examiner Norwood: I think you had better just go ahead and let the witness identify them.

By Mr. MacIntyre:

Q. Now, referring to my question to you, Mr. Dell, will you please state your answer to that question.

A. That is my working copy of Panama Canal Schedule No. 3028, which were opened February 11, 1935.

Q. That is one of the official records of the Panama Canal.

257 Mr. Stewart: Well, I move to strike that out. Let the witness say that that is what it is instead of telling him what it is. He said it is his working papers.

Trial Examiner Norwood: Yes.

Mr. Stewart: Now, if he says it is an official document, that is another matter.

Trial Examiner Norwood: Now, let me repeat here, counsel's statements are not evidence and are not considered as evidence.

Mr. Stewart: That is the way the record stands, but let us ask the question.

Trial Examiner Norwood: If the counsel wants any further testimony about that he may ask the witness, otherwise that characterization of his is not in evidence.

Mr. Stewart: That is the point.

Trial Examiner Norwood: But he may have shown that is such a document that I would characterize it and you or anyone else as the official document.

Mr. Stewart: No, I don't know that I would, because, as I understand the witness, he says it is his working copy.

Trial Examiner Norwood: Well, let him show us what he wants to about it. He say show the rest.

Mr. MacIntyre: But let me ask the witness a further question on it.

By Mr. MacIntyre:

258 Q. I now refer to Commission's Exhibit 294-A to Z, for identification, Mr. Dell. Is that an official paper of The Panama Canal and of its files?

A. That is an exact copy of the schedule as printed. I don't know just what you mean by "official document."

Q. Is it from the official files of The Panama Canal?

A. From the official files of The Panama Canal.

Q. Is it one of their records?

A. It is.

Q. I now show you, Mr. Dell, Commission's Exhibit, for identification, 295-A to Q, inclusive. Will you please state for the record what that is, if you know.

A. This is the official abstract of The Panama Canal of bids submitted and read under Schedule No. 3028 on February 11, 1935.

Q. Does it contain in it a tabulation of bids on rigid steel conduit?

A. Contains the names and addresses of all bidders under the schedule, including the names and addresses and prices and discounts offered under class 1 per galvanized conduit.

Q. How can we determine what bids relate to class 1 that you have spoken about as appear in this abstract?

A. They are listed under class 1. We have a column for class 1, and all bids received under class 1 per galvanized conduit are listed in this column.

259 Q. Bids under No. 1 on Commission's Exhibit, for identification, 295-H?

A. That is right.

Q. Is that class 1?

A. That is right.

Q. And where are the names of the bidders represented by those numbers opposite that column?

A. On Exhibit C, 295-C, D, E, and F.

Q. And are they opposite corresponding numbers on those pages?

A. Corresponding numbers.

Q. That is, numbers corresponding to those—

A. Bid numbers.

Q. Yes.

Now, I will ask you whether or not you made an award to anyone pursuant to those bids?

A. We did. We awarded the people—the contractor has changed his name in recent years. I want to see what his name was at that time. Home Lighting Company.

Q. And what was the amount of the bid of the Home Lighting Company?

A. The total amount of the award was $3,075.

Q. Why was award made to the Home Lighting Company in that instance?

A. As low bidder.

260 Q. Were there any tie bids? They are shown by the abstract if there are.

A. There are quite a number of them.

Q. And at what amount?

A. At $3,080.

Q. I now show you, Mr. Dell, Commission's Exhibit, for identification, 296. Tell us what that is, if you know.

A. A letter addressed by The Panama Canal to Home Lighting Company, February 15, 1935, making inquiry as to whether the price quoted was correct.

Q. I now show you Commission's Exhibit 298, for identification. Tell us what that is, if you know.

A. Letter of February 16, 1935, addressed by the Home Lighting Company, Inc., to The Panama Canal—

Mr. Stewart: That is sufficient.

A. —confirming price.

By Mr. MacIntyre:

Q. I now show you Commission's Exhibit 297-A and 297-B and ask you to tell us what they are, if you know.

A. Letter dated February 15, 1935, from Supervisory Agency roughing-in classification Electrical Manufacturing Industry Code of American Circular Loom Company, Inc.

Mr. King: Is that to the American Circular Loom?

Mr. Stewart: No; it is from Hodkinson.

The Witness: To the general purchasing officer of

261 The Panama Canal.

Mr. MacIntyre: Will the Respondents concede that this is from F. C. Hodkinson, one of the respondents in this case?

Mr. Stewart: I didn't say that is what it was.

Mr. Robison: He said will you concede it?

Mr. Stewart: Yes, I will concede it.

Mr. MacIntyre: Will you concede that that is F. C. Hodkinson's signature at the bottom of the letter?

Mr. King: Why don't you ask him if he got it in the regular course of mail.

Mr. Stewart: I don't understand why we are taking all this time with this.

Mr. Austin: To whom was that addressed?

Mr. Stewart: General Purchasing Officer, Panama Canal.

Yes, I will. I don't know about the rest of them.

Mr. Robison: I will join.

Mr. MacIntyre: You concede that that is Hodkinson's signature?

Mr. Gilpatric: Yes.

By Mr. MacIntyre:

Q. Did you receive these documents, 297-A and 297-B, in due course at the Panama Canal?

A. We did; received February 16.

262 Q. I now show you document marked for identification as Commission's Exhibit 299; ask you to state what that is, if you know.

A. Letter dated February 18, 1935, addressed by the general purchasing officer of the Panama Canal to Government Contracts Branch, National Recovery Administration.

Q. I now show you Commission's Exhibit, for identification, 300. Tell us what that is, if you know.

A. Letter dated February 26, 1935, from Frank Healy, Chief, Government Contracts Branch—

Mr. King: I am sorry. What was that name?

The Witness: H-e-a-l-y; Frank Healy, Chief, Government Contracts Branch, National Recovery Administration, to the general purchasing officer of The Panama Canal.

By Mr. MacIntyre:

Q. I now show you Commission's Exhibit, for identification, 302. Will you please tell us what that is, if you know.

A. Panama Canal Order W-200,211, dated March 11,

1935, to Home Lighting Company, Inc., covering rigid steel conduit awarded this bidder under class 1 of Panama Canal Schedule No. 3028.

Q. I now show you Commission's Exhibit, for identification, 303. Tell us what that is, if you know.

A. Letter dated November 1, 1935, from George V. Johnson, Assistant Division Administrator, National
263 Recovery Administration, addressed to the general purchasing Officer, Panama Canal Commission. This is the official—

Trial Examiner Norwood: What is that marked?

(Discussion ensued between the witness and counsel.)

Trial Examiner Norwood: We will have a five minutes' recess.

(There was a short recess taken.)

(Documents were thereupon marked for identification "Commission's Exhibits 304-A to 304-Z-7, 305-A to 305-S, 306-A to 306-Z-6, 307-A to 307-N, 308-A to 308-Z-12, 309-A to 309-V, 310-A to 310-Z-33, and 311-A to 311-Z.")

Trial Examiner Norwood: Come to order, gentlemen, please.

Mr. MacIntyre: If Your Honor please, I believe that we have an understanding with respondents' counsel pursuant to which they are willing to accept the witness' testimony as to what is shown with respect to certain transactions by documents which we have before us rather than for us to take the time of marking those documents and encumbering the record by offering them for the record, so therefore we will attempt to adopt a shorter course, or at least what appears at this moment to be a prospective shorter course,
by asking the witness a few questions about each of
264 these schedules to avoid putting them in the record.

Trial Examiner Norwood: Proceed.

By Mr. MacIntyre:

Q. Mr. Dell, I again show you Commission's Exhibit, for identification, 294-A to Z. You have already identified that for us, but now will you please tell us what that proposal called for in the way of bids, if any, on rigid steel conduit?

A. Class 1 of Schedule 3028 calls for bids on 50,000 feet of rigid steel galvanized conduit half-inch inside diameter.

Q. For delivery to the Panama Canal at what place?

A. Delivery at Cristobal or Balboa, Canal Zone.

Q. And will you tell us now the names of the bidders and the amounts that were bid pursuant to that proposal and the date of the opening?

Mr. King: Would you read them slowly so we can take them down as you read them, please.

A. Date of opening, February 11, 1935, on galvanized conduit, class 1, the following bids were received.

By Mr. MacIntyre:

Q. Now, when you give the name of the bidder, give the amount of the bidder all along with the name rather than giving all names at one time and the amounts later.

A. American Circular Loom Company, Inc.

Mr. Stewart: Just so that we keep the record straight, I assume from the date that this was during the code
265 period, and, therefore, for the sake of the record, we object to all testimony concerning bids, particular identical bids, for the reason that under the N. R. A. code at that time the matter of bidding was governed by the code and we therefore submit that this testimony is incompetent, irrelevant, and immaterial.

Mr. King: I understood we had a standing objection.

Mr. Stewart: Well, I didn't know.

Trial Examiner Norwood: The objection is overruled.

By Mr. MacIntyre:

Q. Will you proceed, Mr. Dell.

A. Address, 204 East Forty-second.

Mr. Stewart: If you don't want them, we don't care for the addresses. Just American Circular Loom Company.

Mr. MacIntyre: I believe it is sufficiently understood, in all these, wholesalers or whether they are manufacturers, that the names as given here will be the names of those—that is, identical names of other parties that we have in the record. In other words, we have the Graybar Electric Company, for example, mentioned by Mr. Dell, it will be taken to be the company by that name shown by other records or pleadings in this case.

Mr. Robison: That may be understood unless it is otherwise shown.

Mr. MacIntyre: That is, unless it is affirmatively
266 shown to the contrary.

Mr. Robison: That is correct.

Mr. MacIntyre: So just give us the names of the parties without addresses, and the amounts they bid, Mr. Dell.

A. American Circular Loom Company, Inc., total price $3,080.

Mr. Stewart: Now, may I ask at this point, does that include the discount and everything?

The Witness: Discount, 5 percent for payment on or before the 10th proximo following the date of delivery.

By Mr. MacIntyre:

Q. Give us the discount for each.

A. Five percent for payment on or before the 10th proximo following the date of delivery.

Atlantic Electric Supply, Inc., $3,080. Discount, 5 percent for payment on or before the 15th proximo after delivery.

American Electric Supply Company, Inc., $3,080. Discount, 5 percent for payment within 10 days after delivery.

Central Tube Company, $3,080. Discount, 5 percent—10th proximo.

Is that all right to abbreviate?

Mr. Stewart: Yes, sure.

The Witness: Crannell, Nugent & Kranzer, Inc., $3,080. Five percent 10th prox.

267 Doubleday-Hill Electric Company, $3,080. Five percent, 10th proximo.

Enameled Metals Company, $3,080. Five percent, 10th proximo.

Erickson Speich, Inc., $3,080. Five percent 10 days.

Garland Manufacturing Company, $3,080. Five percent, 10th proximo.

General Electric Supply Corporation, $3,080. Five percent 10th proximo following date of shipment.

Gertler Electric Supply Corporation, $3,080. Five percent, 10th proximo.

Graybar Electric Company, Inc., $3,080. Five percent, 10th proximo.

Greene Wolf Company, Inc., $3,080. Five percent, 10th proximo.

Melville B. Hall, Inc., $3,080. Five percent, 15th proximo.

Home Lighting Company, $3,075. Five percent 10 days.

The Joslyn Company, $3,080. Five percent 10 days.

Clayton Mark & Company, $3,080. Five percent 15th proximo.

National Electric Products Corporation, $3,080. Five percent 10th proximo.

268 Shell Electric Supply Corporation, $3,080. Five percent 10 days.

Steelduct Company, $3,080. Five percent 10th proximo following date of shipment.

Steel & Tubes, Inc., $3,080. Five percent 10 days.

Sterns Electric Equipment Company, Inc., $3,080. Five percent 10 days.

Triangle Conduit & Cable Company, Inc., $3,080. Five percent 10th proximo.

United States Electric Export Corporation, $3,080. Five percent 10th proximo.

Walker Brothers, $3,080. Five percent 10th proximo.

S. Weinstein Supply Company, $3,080. Five percent 10 days.

Youngstown Sheet & Tube Company, $3,080. Five percent 10th proximo.

Laclede Tube Company, $3,080. Five percent 10 days from date of invoice.

Goodman Light Supply Company, Inc., $3,305; 5 percent 10 days.

National Electrical Supply Company, $3,080. Five percent 15th proximo.

That is all.

By Mr. MacIntyre:

269 Q. Now, those bids that you have just told us about, you received under seal from the bidders, did you?

A. Those were in sealed envelopes, yes.

Q. And did you receive other bids since that date from other suppliers of rigid steel conduit?

A. Under subsequent schedules, yes.

Q. And under seal in each case?

A. Under seal.

Q. Mr. Dell, I now show you a group of papers which you brought in this morning. Will you tell us whether or not that they are records of your office and records of those subsequent bids about which you just told us; that is, that you received?

A. They are all official records of The Panama Canal.

Q. Now, as I understand it, rather than for us being compelled to put those records—to show what bids were submitted on rigid steel conduit to The Panama Canal, it is all right with counsel for respondents for you to tell us, after reference to those records, tell us the numbers of the

schedules on each of those sets of bids, the dates on which the bids were opened, and the names of each bidder, and the amount submitted by each bidder for the record on rigid steel conduit.

Mr. Robison: Taking up each schedule number separately.

Mr. MacIntyre: That is true, taking up each sepa-
270 rately, and tell us as to each one of those just as you did with the others, the names of the bidders, the dates and the amounts bid by each bidder.

Mr. Stewart: I am wondering why, if it were possible here, Mr. MacIntyre could not have the gentleman make a memorandum about it instead of sitting here reading all this. If it would be more convenient for him I suggest that that be done. It seems foolish to me to be sitting here—I mean, I am perfectly willing to take this gentleman's statement that that is the case, instead of sitting here.

Mr. MacIntyre: To make a tabulation for the respondents—then, we can adjourn at this time, and within the next hour this man can dictate—I can arrange for someone to whom he can dictate such a statement as he would give for the record, and we can have that marked for identification and offer it as his statement immediately after reconvening, and it would contain such information as he would otherwise testify to.

Trial Examiner Norwood: That seems to me to be very constructive.

Mr. Stewart: And, as I understand it, not that I would question the gentleman's work—there might be errors—these records will be available to us to check it, if necessary?

Mr. MacIntyre: Yes, subject to the check of what
271 his tabulation will show.

Mr. Stewart: That is what I mean.

That is all.

Mr. MacIntyre: And, of course, he will be available to you for your cross-examination of him this afternoon.

Mr. Stewart: Oh, sure. We understand.

Trial Examiner Norwood: What hour do you wish to adjourn to,—1:30?

Mr. MacIntyre: I believe that by 1:30 we could have such tabulation prepared.

Mr. Austin: We have about 56 exhibits to go through, Judge.

Trial Examiner Norwood: What is your pleasure?

Mr. Austin: I can be through. I do not know about the others.

Mr. Houston: I might ask Mr. MacIntyre whether he will extend a similar courtesy to respondents in the event respondents, in their case, choose to put in some similar statement of bids, similar to the arrangement we are making here.

Mr. Stewart: I do not think that the gentleman can ever do that in an hour or an hour and a half.

Mr. King: I would like to have one thing clear, so far as Clayton Mark & Company is concerned. I entirely approve the stipulation, but I want it understood that
272 for the purpose of cross-examination it will be the same as if this witness—as if Mr. MacIntyre had introduced these documents in evidence.

Mr. Stewart: That is the idea.

Trial Examiner Norwood: Yes, that is right.

Mr. Stewart: We always have access to these documents, for verification.

Trial Examiner Norwood: All right. We will recess until 1:30.

Mr. MacIntyre: Just before you recess, Mr. Examiner. That is, access to these papers he has here from which he would have, or to which he would have made reference in the course of his testimony.

Mr. Stewart: Yes, sir.

Trial Examiner Norwood: Yes. I know.

We will recess now until 1:30 this afternoon.

(Whereupon, at 11:50 o'clock a. m., a recess was taken until 1:30 o'clock p. m. of the same day.)

273 Afternoon Session.

1:30 P. M.

Trial Examiner Norwood: The hearing come to order. I will hear the counsel for the respondents on the objections to the proffers from Commission's Exhibits, for identification, 91 to 293, inclusive.

Mr. Stewart: All right.

These exhibits are objected to, first, for the reason that, as they show on their face, they cover activities during the existence of the National Industrial Recovery Act and the

code promulgated thereunder affecting the conduit industry, and, in so far as any acts are claimed to have been perpetrated during the period and under that code, the Government or any of its agencies, including the complainant here, is estopped to assert any illegality; second, for the reason that a portion of the offer of counsel for the complainant assumes that the—as to those documents which are written by either F. C. Hodkinson or T. A. Bibber is that—T. H. Bibber, that these individuals were agents of the respondents in sending these letters or in whatever respect they acted, whereas there is no proof in the record that such was the fact; and the proof is that, as shown by the exhibits, Mr. Hodkinson and Mr. Bibber were both purporting to act as duly authorized representatives of the National Industrial Recovery Act authority, their appointments as supervisory agent being under the provisions of that code, and, therefore—

274 Trial Examiner Norwood: Were they the code authority or were they under the code authority?

Mr. Stewart: No. The code authority was National Electrical Manufacturers Association.

Mr. Robison: Board of Governors Association.

Mr. Stewart: Well, the Board of Governors, strictly speaking.

Mr. Robison: Yes.

Mr. Stewart: And as you probably understand the code provides that the N. E. M. A. has authority to appoint supervisory agents, and if Mr. Hodkinson was acting or undertaking to act at all in the matters covered by the exhibits he was only acting as such supervisory agent and could in no way be regarded as an agent of the respondents in what he did;

Three, as to the offer in respect to the exhibits showing that Mr. Hodkinson exceeded his authority as a code official, of course, the exhibit referred to by counsel does not show such to be the fact and even if it did the evidence would be immaterial for the reason that the respondents are in no way chargeable with any activities of Mr. Hodkinson;

Fourth, in view of the fact that there is no allegation in the complaint respecting any of the activities of the respondents under the N. R. A. code, the evidence is incompetent, irrelevant, and immaterial under the pleadings.

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Finally—well, I gues that is all that I care to
275 state now. As I understand it, Mr. Gilpatric has gone into the details of it.

Mr. Gilpatric: Mr. Examiner, I first have objections to specific exhibits. In addition to duplications to which you referred this morning, that is, Exhibit 142 being a duplication of 141, and 188 being duplication of 187, I direct your attention to the following duplications: Exhibit No. 205 is a duplicate of 287; Exhibit 266 is duplicate of 263; Exhibit 267 is duplicate of 265. I think counsel for the Commission should withdraw those duplicates.

Secondly, there are a number of these exhibits which do not relate to the rigid steel conduit industry or are material. For example, the group of exhibits beginning with 119 and going through 128 all relate to a complaint growing out of a price quotation on non-metallic cable. That is perfectly apparent from reading that group of letters that there is no reference there to rigid steel conduit. The same thing is true of—

Trial Examiner Norwood: Are the respondents in any way involved in that controversy, in those complaints, and so forth?

Mr. Stewart: Well, some of them are but it hasn't anything to do with conduit; that is the point.

Mr. Gilpatric: There is no charge in this complaint that relates to non-metallic cable.

276 The group of exhibits from 271 to 279, inclusive, all relate to a complaint growing out of alleged price cutting on elbows.

Trial Examiner Norwood: Wait a minute now. What are those numbers?

Mr. Gilpatric: 271 through 279, inclusive.

Trial Examiner Norwood: All right. Relate to what?

Mr. Gilpatric: All relate to elbows, elbows or fittings, which happen to be sold, as I understand it, by certain of the manufacturers who manufacture conduit, but that again is not part of the charge in this case.

Now, there are other letters, and I haven't, frankly, examined every letter with this in view, but there are other letters, and I will name one specifically, 194, which has no reference to any kind of material. It is a letter written by Hodkinson, as supervisory agency under this NEMA code roughing-in section, and it was written to one of the respondents, but it could just as well refer to some fitting,

some material manufactured that is not included in this complaint; and I think to make the evidence competent and material proof should be shown that that letter related to conduit.

I also object to Exhibit No. 159, which is a photostat of a letter in the handwriting of Hodkinson to "Dear G-e-o period." Now, there is no way of telling from
277 that exhibit who "G-e-o" is, whether he is one of the respondents or an officer there is no internal reference which identifies that. I think that should be stricken.

Now, as to the balance and supplementing what Mr. Stewart has stated to you, I have this general objection, and I want to address myself to the remarks which you made yesterday as to the theories on which you considered this evidence of transactions during the N. R. A. period to be admissible.

As I understand it, you stated that this sort of evidence might bear on whether or not a particular code authority had exceeded the limitation of the law, the permissible scope of its activities under the law, or whether a particular code in itself was legal. Now, as I understand Mr. MacIntyre's offer, he is not offering this evidence here under consideration to show either of those things. He is offering it to show that these transactions in themselves were restraints of trade and were acts of a conspiracy and, in the second place, you stated that evidence of this type might be admissible in order to show or explain what had happened before or after the code period. Again the offer of proof here is not directed toward that purpose. And so I feel that it is stretching this "subject-to-connection" rule, the basis for which I can see, altogether too far to take in a mass offer of 150 documents and expect us at the conclusion
278 of this case to trace through and see whether these things have been connected.

Trial Examiner Norwood: I didn't intend my remarks to be all-inclusive. I was merely suggesting possible—one possible reason or two possible reasons why the papers might on examination be found to be relevant in the period. Any further objection?

Mr. Houston: On behalf of Mr. Hodkinson, who has been taken to be the evil genius behind this scheme, I would like to say Mr. Hodkinson certainly constituted the act under the code in this case. It has been suggested he exceeded his authority. This I deny, and ask it be proved, if

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that is the case. If that is the case, I suggest he is not the first administrative agency to have exceeded his authority, and I do not think that still subjects him to the penalties of section 5 of the provisions of the Federal Trade Act.

I join in all the other objections which have been made on behalf of the others.

Mr. Peyser: In behalf of M. B. Austin Company, I object to all of the exhibits, Commission's Exhibits 91 to, I believe, 285, inclusive, on the ground that the M. B. Austin Company did not adopt the code, nor does it appear that it had the adopted the code; nor do any of the exhibits in any way refer to M. B. Austin, and as to it they are entirely irrelevant and immaterial, and not within the scope of the complaint.

279 Now, on behalf of Triangle Conduit & Cable Co., Inc., I should like to point out that there is reference in the correspondence to a Triangle Electric. I do not know whether it is a wholesaler or a jobber, or what, but it is not the respondent, Triangle Conduit & Cable Co., Inc., a New York corporation.

As to specific exhibits, Commission's Exhibits 145, 144, and 149, I object thereto specifically on the ground that they refer to conversations allegedly had by the writer with one J. E. McAuliff, who happened at that time to be the president of the respondent, Triangle Conduit & Cable Co., Inc., of New York.

Mr. Welch: I take it that under our general objections which have been raised at the other hearings, these exhibits are introduced in evidence and can only be tied up against the particular respondents if there appears the connection; and on behalf of the Organization Service group defendants, they were not in at this period of time, and I object to their reception as against those respondents.

I take it we have the benefit of all the objections of all other counsel.

Trial Examiner Norwood: Yes.

Is there any other objection?

Mr. King: In addition to all of the objections which have been made by all of the counsel, I specifically

280 object to Exhibit No. 191 on the ground that that exhibit is offered as a whole by Mr. MacIntyre, as I understand it, and as a whole it has not been authenticated by anyone.

Mr. Stewart: Well, now, I should like—I thought you

were going to raise this question—I should also like to add to my objection the following reason that inasmuch as these exhibits have been evidently introduced on the theory that they were under the code, there is no showing here as to who were members of the code, consequently there could be no connection between Mr. Hodkinson and Mr. Bibber, as supervisory agents of the code, and the companies who were not shown to have been under the code.

It seems to me, if I may suggest it, that this particular feature is left, the most fundamental aspect, out of the picture, namely, that at least we ought to have the code in the record so we know what we are talking about, and we know what Mr. Hodkinson's authority was, otherwise we are all in the dark. We are arguing about something—

Trial Examiner Norwood: Well, isn't it the respondents that are bringing the code in here?

Mr. Stewart: Well, I do not see how Mr. MacIntyre can get in evidence on the theory that it was an N. R. A. activity, and we are responsible for it, without showing our responsibility. That can only be on the theory that we were under the code, part of the code authority.

281 Trial Examiner Norwood: I do not think he is saying anything about the N. R. A.

Mr. MacIntyre: I have not contended that these are N. R. A. activities. In fact, I am contending that they are not N. R. A. activities, that they are activities of these respondents, and I challenge the respondents or anyone else to show that they are any acts of anyone else but the respondents.

Are all of the objections in?

Mr. Austin: I certainly will accept your challenge, sir. I do not think there are any acts of the wholesalers in this exhibit.

Mr. King: I challenge it, too. I do not think that there are any violations of any law contained in any of the exhibits.

Trial Examiner Norwood: Go ahead.

Mr. MacIntyre: Are all the objections in?

Mr. Poskanzer: I assume we have the benefit of the general objection.

I have nothing to add specifically.

Trial Examiner Norwood: Go ahead.

Mr. MacIntyre: If Your Honor please, in reply to these objections, I would just like to say this, that this offer is

not restricted to showing these as acts of these respondents, even though they be, as I contended yesterday,
282 even though they do disclose acts in restraint of trade.

It is much further than that. It is the picture of purpose of these respondents as to what the purpose of further acts that they have done, since the time and of which we are now putting in evidence, and of which more evidence will go in concerning those other acts, so even as to these acts if they were legal, which they were not, then the evidence of them as purpose of other acts which have since been committed would make it well worth while as evidence for consideration by this Commission; and it is the very best of evidence because it is a record of actions by these respondents. It is their record, something for which they are responsible. They made it. We are entitled, therefore, to use it against them as their admissions, and it is offered as their record, as admissions of these respondents; therefore, the question of hearsay is completely gone. There can be no such question here as to these records; and as to Mr. Hodkinson, who is responsible for making many of these records, as well as the other respondents who made the balance, there can be no question of his connection, or of the respondents' connection with the activities that are charged.

There is the story in the records, and admissions of the respondents themselves as to their connection, and we will add to that to more firmly cement that connection.

What more in the form of agency do you want than the taking of the benefits through ratification and acquies-
283 cence, if you please, of the acts of those who are acting on your behalf. That is what Mr. Hodkinson was doing here for these respondents. He had more authority than that, because the United States Government did not name Mr. Hodkinson to act for these respondents and on their behalf. This Board of Governors, to which Mr. Stewart makes reference, of the National Electrical Wholesalers Association—the National Electrical Manufacturers Association, if you will change that, Mr. Reporter—in naming Mr. Hodkinson did so at somebody's request, but certainly this record does not show that they acted at the request of the United States Government in naming Mr. Hodkinson to so act, and I challenge any one man attempting to show that the United States Government requested NEMA—that is the National Electrical Manufacturers Association—to name Mr. Hodkinson to act for the respondents.

Now, as to the question of duplicates, if we offered any duplicate it has been by oversight and we will be happy to withdraw one of the two documents of any duplicates which are included in this offer, and I am very happy to have it called to my attention if such duplicates are in there, and we will take care of that.

Now, as to this question of elbows, referred to by respondents' counsel, conduit elbows is manufactured and sold by these respondents, is a part of conduit in installation.

There are places where you cannot install conduit as
284 electrical raceways, as described in this complaint, except through the use of elbows in so doing. Consequently, it is a part of the conduit product sold by these respondents, and even if it were not a part of such product the showing in Commission's exhibits in this case offered, 271 to 279, in which elbows are mentioned, nevertheless go to the question of showing what was the purpose of these respondents in the use of Mr. Hodkinson as a part of this conspiracy.

If for no other purpose those exhibits as to elbows are usable to show purpose, as in Mr. Hodkinson's position of handling activities for these respondents on conduit; aside from elbows, the same argument, of course, is applicable to 119 to 128, in which mention is made of non-metallic cable or conduit, because there those exhibits go to the showing of the purpose of these respondents as manufacturers of non-metallic conduit, in the purpose of Mr. Hodkinson, in the fixing of prices or of charges on all products with which they were concerned and with which they could concern Mr. Hodkinson at that time; consequently, we believe, therefore, that Commission's Exhibits 119 to 128, inclusive, 271 to 279, inclusive, should be included for what they are worth in showing the purpose of these respondents and the use of Mr. Hodkinson in carrying on these activities.

I would like to see 191, if you please.

Trial Examiner Norwood: Off the record.

285 (Discussion off the record.)

Trial Examiner Norwood: On the record.

Mr. MacIntyre: Now, as to Commission's Exhibit 191, Mr. King, unless I am badly mistaken, I understand him to say that that exhibit has not been identified.

Mr. King: Not authenticated.

Trial Examiner Norwood: That is Commission's Exhibit 191?

Mr. King: That is Commission's Exhibit No. 191.

Mr. MacIntyre: That is No. 191.

Mr. King: As a whole.

Mr. MacIntyre: I cannot understand that objection in the light of a certificate that appears on the reverse side of that document, to the effect—

Mr. King: Who signed it?

Mr. MacIntyre: Mr. James M. Houston, as attorney for Frank C. Hodkinson, respondent, and Frank C. Hodkinson as an individual, to the effect that the document is a genuine and authentic document, including longhand note in the handwriting of Frank C. Hodkinson in the upper left corner.

It is true that when Mr. King previously certified the document he did not certify the genuineness of that particular handwritten note. Mr. Hodkinson subsequently did so. So I submit the entire document has been authenticated, including the handwritten note in the upper lefthand corner.

286 Now, as to Commission's Exhibit No. 159—

Trial Examiner Norwood: Let's see. Now, identify it. What is the ground of the objection there?

Mr. MacIntyre: No. They have been identified, both of them. It was Mr. King's objection that Exhibit 191 had not been completely identified as to that note.

Trial Examiner Norwood: The objection to Commission's Exhibit 159 is on the ground the addressee has not been identified as connected with this case?

Mr. Gilpatric: Parties to it.

Trial Examiner Norwood: Yes.

Mr. MacIntyre: Well, my answer to that, if Your Honor please, is this, it is identified and established as an authentic writing of Frank C. Hodkinson, one of the respondents. It would not matter, therefore, if Frank C. Hodkinson—if it had been established from this record that Frank C. Hodkinson was standing in front of the door out here and made, this statement, and you could not see the man to whom he made it, you could not identify the man, the statement nevertheless is relevant and material here and would be admissible against Hodkinson, and in so far as Hodkinson in making that statement connected the other

respondents against them, and I submit, therefore, it is admissible in evidence.

Trial Examiner Norwood: Is it such a statement as Mr. Hodkinson would lawfully make with respect to his own
287 business?

Mr. Gilpatric: My objection goes to immateriality and irrevelancy. I do not question that is Hodkinson's handwriting. I say it is immaterial to this case on its face.

Mr. MacIntyre: I submit it is relevant and material to the issues here when it is taken as a part of the picture shown by this offer.

Mr. Stewart: To show purpose?

Mr. MacIntyre: It shows purpose, and more than purpose.

Mr. Stewart: That is your every-ready phrase.

Trial Examiner Norwood: Is there anything further?

Mr. Stewart: I should like to say this in reply to Mr. MacIntyre's argument—or course, one can always learn something new, but I am going to be utterly amazed to find that either the Examiner or the Commission holds that people who were duty bound to obey the law under the penalty of going to jail if you did not obey it, were guilty of violating the law if you did obey it, and that is just exactly what this evidence amounts to, namely, that when these people were complying with the orders, of the supervisory agency of the N. R. A. administration, whatever we may think about the N. R. A. today, the fact remains that all they were doing was in an endeavor to comply with the law.

Now, as you no doubt recall, in fact the country very
288 well recalls, there was a pants presser went to jail for charging 5 cents too much, and there was a man in Pennsylvania went to jail because he would not obey the code.

Now, have we reached the stage where these respondents have the choice of either obeying the code and being charged with violating the Federal Trade Commission Act, or disobey the code and going to jail for disobeying the code?

Trial Examiner Norwood: The respondents made the code.

Mr. Stewart: Did what?

Trial Examiner Norwood: Aren't they the ones who made the code?

Mr. Stewart: No, of course they are not the ones who made the code.

Trial Examiner Norwood: Who made it?

Mr. Stewart: Everybody knows what the code was. It was a device devolved by the Administration to promote recovery. It had the authority of the law, otherwise it could not have existed. Now, is one branch of the Government going to penalize a man for not obeying, and another going to penalize him for obeying? Now, that is just the situation these respondents find themselves in, Mr. MacIntyre's theory is correct, because he says despite the fact that all of this documentary evidence shows it was done under the N. R. A., just forgetting about that, I am showing it as
289 acts done in furtherance of a conspiracy. Of course, this all-inclusive form, purpose, and so on and so forth, that is one that is constantly used in conspiracy purposes and covers a multitude of evils. When you cannot think of any other reason you think of that one. But the specific proposition here is where under the evidence which is submitted by the Commission in these exhibits there is no question at all that everything that was done was done on the theory that it was in furtherance of the National Industrial Recovery Act, is that evidence admissible against these respondents now to show any of the allegations of the complaint concerning combinations in restraint of trade, or in violation of the Federal Trade Commission Act, and I submit it is not. It is utterly irrelevant and immaterial.

Trial Examiner Norwood: Will that go to the measure of their responsibility? Would that operate to exclude evidence as to what they did?

Mr. Stewart: Well, sir, you see what I am—as I understand it, I do not have the case at my hand. I have it where I can produce it. As I understand it, though, you cannot be put in the position as a citizen where you have to make the choice between obeying the law on one hand, or being penalized, and that later the act is declared unconstitutional, let us say, as this one was, then find yourself in the dilemma of being charged with violating some other
290 law. Government does not operate that way. Government is no better off than an individual when it comes to estoppel. These acts here, if you could attribute them to anything other than the activities of the N. R. A. that would, of course, be a totally different proposition, but manifestly the evidence which is submitted in the exhibits shows right

on its face that the only reason they were notifying the administrator of violations, or he was calling their attention to violations, was because he was following out, or they were following out what they believed to be the provisions of the code.

Now, the amazing part about a great deal of this evidence is, and you have it right there, when it boils down, it really comes out to nothing. Mr. Hodkinson writes a letter what about this, and the answer comes back that it is not true. There are several letters. Mr. MacIntyre spoke about the elbow business. Mr. Quinn complained about somebody in Detroit chiseling on elbows, and they wrote several letters back and forth, and it ends up by Mr. Quinn saying, "Well, we found out there is nothing to it, so forget it."

Trial Examiner Norwood: Isn't an elbow conduit?

Mr. Stewart: No.

Trial Examiner Norwood: Isn't it made out of the same rigid steel?

Mr. Stewart: Sir?

Trial Examiner Norwood: Isn't it made out of 291 rigid steel and some material that pipe is made of?

Mr. Stewart: I do not know, but I do not think so. An elbow is an elbow.

Trial Examiner Norwood: It is just a joint.

Mr. Houston: It is made out of steel, sir.

Trial Examiner Norwood: Yes.

Mr. Houston: It is made out of steel but it is not any more a part of it than zinc that goes into it.

Trial Examiner Norwood: It is made out of the same material that steel—

Mr. Stewart: No.

Trial Examiner Norwood: The same size opening?

Mr. Stewart: No. An elbow is an elbow. An electric metallic tubing is not conduit.

Trial Examiner Norwood: Has any of the counsel this Exhibit 287 here? I want to compare it.

Mr. Stewart: Is that that telegram?

Trial Examiner Norwood: 285 and 287, compare that, and see if you want to withdraw that, and which one you want to withdraw.

Mr. MacIntyre: 287 was offered, I believe.

Mr. Gilpatric: Commission's Exhibit 205 is a duplicate.

Trial Examiner Norwood: Now, which one do you want to withdraw?

292 Mr. MacIntyre: If respondents are now willing to concede that 287, which was received in evidence yesterday, was a telegram of Mr. Hodkinson, or at least a copy of a telegram of Mr. Hodkinson, which Mr. Hodkinson sent to Mr. McFadyen of the Cohoes Rolling Mill Company, and which was in turn sent by that company to the witness Vigman, who was on the stand here yesterday, then I will withdraw my offer on 205; otherwise, I will want the offer to stand even though it is an apparent duplication. I feel that there are additional facts shown by the author that need to go in without the concession.

Trial Examiner Norwood: How about 266 and 263? Let us look those up.

Mr. MacIntyre: Let's dispose of this, if we may, my request for a concession, if they make that I will withdraw it.

Mr. Stewart: I do not see why we have to concede anything.

Mr. Gilpatric: The testimony of Vigman speaks for itself. He testified to that. That stands here.

Mr. MacIntyre: Vigman never saw this particular document. He saw a copy of it.

Mr. Stewart: I do not understand—

Mr. MacIntyre: I do not care to withdraw it without the concession I asked.

293 Mr. Stewart: You won't get any concession.

Trial Examiner Norwood: It remains in if there is any reason for it to remain in.

Mr. MacIntyre: I will ask that 205 and 287 remain in the record even though they are duplicate telegrams because of circumstances surrounding the source.

Mr. Poskanzer: I object to the reference of telegrams. They are photostats of the same telegram, not duplicate telegrams.

Trial Examiner Norwood: Well, they will have to remain in there, I suppose, for the Commission and Trial Examiner to compare.

Now, here is 263 and 266. There is no reason for going over those.

Mr. MacIntyre: I will withdraw the offer on 263.

Trial Examiner Norwood: 263.

Mr. Stewart: You mean you withdraw the exhibit?

Mr. Gilpatric: It is offered but not in evidence.

Mr. Stewart: Oh, I see. Yes.

Trial Examiner Norwood: Now, 265. Wait a minute. Here. 267; 265. Are they duplicates?

Mr. MacIntyre: I withdraw the offer on 265.

Trial Examiner Norwood: Let the record show that the following Commission's exhibits, for identification, in the pending proffer have been withdrawn: 142, 188, 294 244, 263, and 265.

(Thereupon, Commission's Exhibits Nos. 142, 188, 244, 263, and 265 were withdrawn.)

Trial Examiner Norwood: Now, as to the others, the objections are overruled and they are received in evidence for the purposes stated.

COMMISSION'S EXHIBITS NOS. 91, 92-A, B, 93 to 102, 112 to 114, 119 to 121, 122-A, B, 123 to 131, 133 to 141, 143 to 150, 153 to 155, 157 to 187, 189 to 243, 245 to 262, 264 to 286, all correlated numbers inclusive, were offered and received in evidence.

Mr. Peyser: Mr. Examiner, do I understand that you now have concluded my objection in behalf of M. B. Austin Company which was not included in the code nor mentioned in the correspondence?

Trial Examiner Norwood: I think that our understanding was very clear on that in our statements regarding it to the effect that each and every bit of evidence must be connected up in some way with any respondent to which—against whom it is considered.

Mr. Peyser: I will take my exception to that.

Trial Examiner Norwood: This matter of the 295 N. R. A. should be taken up before the Commission and before the courts because it is a judicial question and it is necessary to have these facts in order for the Commission and the court to determine whether or not the code was exceeded; that is, whether or not the code was lawful, that is, as the respondents rely on the code. They have argued it here in the matter of rejecting this testimony.

Mr. Welch: Your Honor, do I understand, then, that the Commission will make a ruling as to whether or not our acts under the code are in question here?

Trial Examiner Norwood: I say that is a legal point which you may take up with them; yes, sir.

Mr. Welch: It seems to me that should be in the complaint.

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Trial Examiner Norwood: Give the other side every phase and feature of this case. We have got to get facts. Proceed.

(Documents were thereupon marked for identification "Commission's Exhibits 312 to 317," inclusive.)

Trial Examiner Norwood: Go ahead.

Mr. MacIntyre: If Your Honor please, I now offer into evidence Commission's Exhibits, for identification, 312, as the constitution, by-laws, and operative resolutions of the National Electrical Wholesalers Association, one of the respondents here.

296 Trial Examiner Norwood: Is that a bound pamphlet?

Mr. MacIntyre: That is a bound book.

Trial Examiner Norwood: Numbered pages?

Mr. MacIntyre: Yes.

Trial Examiner Norwood: How many pages?

Mr. MacIntyre: Of 26 pages.

Trial Examiner Norwood: Go ahead.

Mr. MacIntyre: Commission's Exhibit 313, of 19 pages, as the membership list of the respondent, National Electrical Wholesalers Association, dated January 1, 1936; 314, of 19 pages, as the membership list of the respondent, National Electrical Wholesalers Association, dated January 1, 1937; No. 315, of 19 pages, as the membership list of the respondent, National Electrical Wholesalers Association, dated July 1, 1938; No. 316, of 19 pages, as the membership list of the National Electrical Wholesalers Association, dated July 1, 1939; and 317, of 19 pages, as the membership list of the respondent, National Electrical Wholesalers Association, dated July 15, 1940, and I will ask Mr. Austin if he will now concede on the record that they are genuine and authentic documents of what they purport to be; that is, the constitution and by-laws as the membership list, as I have stated.

Mr. Austin: I do.

Mr. MacIntyre: I offer those in the record at this time.

Trial Examiner Norwood: Any objection?

297 Mr. Poskanzer: If Your Honor please, I wish to object to them on the ground that they have no connection with the Cohoes Rolling Mill Company nor any member of the Rigid Conduit Association. The transactions therein referred to and the date therein contained are not binding on it nor on any of the manufacturers.

Trial Examiner Norwood: Any further objection?

If not, the exhibits are received as marked, 312 to 317.

COMMISSION'S EXHIBITS NOS. 312 to 317, inclusive, were offered and received in evidence.

Trial Examiner Norwood: Proceed.

Mr. MacIntyre: I believe we will be ready to go ahead with a witness in three or four minutes.

Trial Examiner Norwood: Well, let us have a five minute recess.

(There was a short recess taken.)

Trial Examiner Norwood: Proceed.

HERMAN B. DELL was thereupon recalled as a witness for the Commission, and, having been previously sworn, testified further as follows:

Trial Examiner Norwood: Mr. Dell resumes the 298 stand.

Mr. MacIntyre: May we proceed?

If Your Honor please, since our last questions were put to Mr. Dell we have attempted to have him make a more detailed and thorough study of the official records of the Panama Canal for the purpose of arranging his testimony or studying these for the purpose of shortening his testimony, I would say, and I believe that now he is in a position to shorten his testimony with respect to the bids which—the proposals and the bids which the Panama Canal have received concerning rigid steel conduit since February 11, 1935; and I would like to ask that if Mr. Dell has his testimony prepared in a statement form, that is, written statement, that that be accepted for the record, with the consent of counsel for the respondents, in lieu of putting additional questions to him and receiving longer answers.

Mr. Stewart: In the form of a statement?

Mr. MacIntyre: In the form of a statement by him in response to a single question by me.

Mr. Stewart: All right.

Mr. MacIntyre: If that can be with the consent of respondents' counsel.

Mr. Stewart: Well, it sounds all right, but at least let us look at the statement.

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Mr. MacIntyre: I have given respondents a copy of what the answers will be.

299 Mr. Stewart: I thought you meant it was some other document.

Mr. MacIntyre: Now, if I may, I will put the question, with the respondents' consent, and let the statement come as the witness' statement.

Mr. Poskanzer: I haven't seen the statement.

(Discussion off the record.)

Trial Examiner Norwood: Ask your question.

Mr. MacIntyre: I understand counsel wanted to study that statement for a minute before the question was put.

Mr. Poskanzer: I don't think he will if you ask the question.

Trial Examiner Norwood: He can object if he wants to object. Go ahead.

Direct Examination (Continued) by Mr. MacIntyre.

Q. Mr. Dell, you have described to us the bids which were submitted to the Panama Canal and opened, being submitted to it under seal and opened by it on February 11, 1935, on schedule 3028 for 50,000 feet of one-half inch rigid steel conduit. I will now ask you if the Panama Canal received additional bids since that date on rigid steel conduit, that is, proposals for furnishing to it certain lots of rigid steel conduit?

A. Yes, sir; we have.

300 Q. And are you now prepared to submit a statement for the record concerning the dates of those opening of bids, the schedule numbers, the amount of conduit involved, the names of the bidders, and the amounts bid by those bidders?

A. I am.

Q. Well, will you please make such statement for the record?

A. Do you want me to read these?

Q. Just give him that information as it is asked for in my question.

Mr. Stewart: Let me clear the record from my side of the table. Maybe the rest of them will accept it.

By Mr. Stewart:

Q. Mr. Dell, as I understand it, the series of documents which you hold in your hand are tabulations made by you

of certain bids which were received in Panama Canal transactions the date of the opening being specified on the paper and the other details which you have answered in answer to Mr. MacIntyre's question also being shown?

A. That is right.

Q. And these documents you prepared and they were prepared under your supervision and you know that the statements in there are true and correct?

A. That is right.

Mr. Stewart: So far as I am concerned, I have no
301 objection to using them.

(Discussion off the record.)

(Documents were thereupon marked for identification "Commission's Exhibits 318 to 330," inclusive.)

By MacIntyre:

Q. Mr. Dell, instead of submitting your statement for the transcript of the record, I see you have submitted in the form of a typewritten tabulation, or a series of tabulations.

I now show you Commission's Exhibits, for identification, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329 and 330, and ask you if they are tabulations which cover the substance of the statement which—

Mr. Poskanzer: How about 324?

Q. —I understood you were going to make for the record?

(Discussion off the record.)

A. They do.

Q. And these exhibits are true and correct tabulations of the bids as received on rigid steel conduit by the Panama Canal on the schedules and at the time shown thereon—

A. They are.

Q. —that is, on the face of these exhibits; is that true?

A. That is right.

Mr. MacIntyre: Well, if Your Honor please, with consent of counsel for the respondents, I will now offer into the record in lieu of the original abstracts the exhibits,
302 Commission's Exhibits, for identification, 318 to 330, inclusive.

Mr. Stewart: No objection.

Mr. Robison. No objection.

Trial Examiner Norwood: Received as marked.

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Mr. Gilpatric: If Your Honor please, we have an objection to 330 on the ground that it consists of a schedule opened on August 19, 1941, which is considerably after the date of the issuance of the complaint in this proceeding. It is immaterial to the issues raised by the complaint and the answers, on the second ground that prior to this date, August 19, 1941, in April, 1941, a ceiling on prices for conduit was fixed by the Office of Price Administration and Civilian Supply. Therefore, the amounts shown in this Exhibit 330 do not—are not relevant to the issues in this case.

Mr. MacIntyre: If I understand, the objection is going only to 330, and for the reason you just stated?

Mr. Gilpatric: That is correct.

Trial Examiner Norwood: Yes.

Mr. MacIntyre: Well, now, if Your Honor please, Commission's Exhibit 330 is offered for the purpose of showing that these respondents are, as is charged in the complaint which issued January 25, 1941, continuing their practice of submitting uniform bids and uniform price quotations based upon their use of a basing point method or sys-
303 tem of price quoting, and this exhibit certainly sustains that allegation in the complaint, and for that reason it is material and relevant to the issues here.

Trial Examiner Norwood: Well, counsel can withdraw his consent to this for any reason whatsoever, I suppose. Then we have to go into—

Mr. Robison: I don't understand—

Trial Examiner Norwood: We have to go into the entire matter in the long way.

Mr. Gilpatric: No; we are not withdrawing our consent.

Trial Examiner Norwood: You just want your exception—or want it excluded from evidence on the ground you stated?

Mr. Gilpatric: Yes; that is correct.

Mr. Robison: Yes, sir; absolutely.

Trial Examiner Norwood: I will overrule the objection and give the counsel an exception.

Receive 330 along with the others.

COMMISSION'S EXHIBITS NOS. 318 to 330, inclusive, were offered and received in evidence.

Mr. King: Well, in view of Your Honor's statement, I want to make sure I understand the record correctly. I have no objection to putting in this testimony in this

304 way, but I do understand that our standing objections apply to the documents when in. If I am incorrect about that I would like to be advised.

Trial Examiner Norwood: Yes; with respect to its application to your clients.

Mr. King: And all of the other standing objections I made.

Trial Examiner Norwood: Yes. Yes.

Mr. MacIntyre: But you are not making an objection to the form that it is being put in or on any ground that it is incorrect or an erroneous statement?

Mr. King: That is correct.

Mr. Poskanzer: Well, except this: Didn't we understand this morning if on examination of these exhibits some error in the figures or transposition should be exposed, we would have a chance to correct that?

Trial Examiner Norwood: That is correct.

Mr. MacIntyre: Certainly. Certainly. Yes. If you can prove that it is in error in any way, naturally, we wouldn't try to preclude you from doing so.

Mr. Poskanzer: I mean clerical errors.

Trial Examiner Norwood: Proceed.

Mr. MacIntyre: But to be taken as correct until proven otherwise.

305 Mr. Stewart: Well, as I understand what you are offering this last exhibit for, whatever the number is, it is really on the basing-point contention.

Mr. MacIntyre: The continuation of submitting uniform price quotations and in the use of a basing-point system or method of price quoting.

Mr. Stewart: Well, it does not show uniform price quotations.

Mr. MacIntyre: Yes, it does.

Mr. Stewart: Some three, maybe.

Mr. MacIntyre: Seven out of nine are shown.

Trial Examiner Norwood: Proceed. The record shows what it shows.

By Mr. MacIntyre:

Q. Now, Mr. Dell, I understand from your testimony and papers which have been received, that in a number of instances when you received bids at the Panama Canal on rigid steel conduit, you, as the record shows, received tied bids in many instances, which are all in the same amount,

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and that no lower amounts were bid. What procedure do you follow in making awards when you find bids of that character included in a group?

Mr. King: I object to the word "do." It should be "did." These are some time ago.

By Mr. MacIntyre:

Q. Well, with respect to these bids that are covered
306 by your testimony here.

Mr. King: That is better. Thank you.

A. When the low bids are tied as to price and discount, the bids are carefully canvassed to determine first which of the tied bids are strictly in accordance with the conditions and specifications of the advertisement, and those that are not strictly in accordance therewith are not included in the drawing.

After we determine the bids which will be in the drawing, we segregate them according to manufacturers, and all bids of any one manufacturer are included in what we call a subdrawing, and the winning bid of that subdrawing is included in the final drawing later on. Then we take the bids of another manufacturer and have a subdrawing of that manufacturer, and so on, until they have all been classified. We then put the winning bids in a final drawing, and the number that is drawn from the hat receives the award.

By Mr. MacIntyre:

Q. Now, this condition of putting in the hat bids for a final drawing, are they considered by your office to be tied bids?

A. Sure.

Q. They are all equal.

A. In case some bidder offers a better discount than the others, why, he would get the award. We would not have a draw.

307 Q. But these that you put into a hat for the final drawing, for the purpose of determining whether you will make an award to one as against another, do you find that those bids are when you make such—I mean go through such a procedure as that—are tied as to amounts and discounts?

A. They must be before they go to a draw.

Q. Now, I will show you these Commission's Exhibits 319 to 330, inclusive, and ask you with the aid of your

other papers, to use, in which instances involved there in bidding did you find your office going through the procedure that you have just described in drawing numbers from hats in order to determine which of tied bids should receive an award?

Mr. Stewart: Well, I do not mind taking up the time. It is rather interesting inquiry, but I am just wondering what the materiality of it is as to what the office did. If the bids were tied, they were tied, whether they drew them out of a hat or threw them out of the window, what difference does it make who was to get the contract?

Mr. Poskanzer: I want to make a further objection, that it does not make any difference, the testimony is entirely immaterial if they had 50 bids who were tied as low, that would not indicate any collusion or conspiracy or agreement; the evidence that they did draw or did not draw is entirely immaterial to prove the allegations
308 of this complaint in this proceeding.

Mr. MacIntyre: I submit it is material, and I submit it is material first because of the tied bids that are involved, second because of the procedure which is made necessary, or at least considered to be made necessary by virtue of the tied bids as to purchasing of conduit by the United States Government.

Trial Examiner Norwood: Well, I do not see that you need to go any further.

Mr. Stewart: No.

Trial Examiner Norwood: Than to show that the bids were identical.

Mr. Stewart: That is right.

Trial Examiner Norwood: What good purpose would be served by showing that just one statement to complete the picture.

Mr. MacIntyre: If the witness is permitted to answer the question now pending, it will establish definitely which, if any of the instances involved in Commission's Exhibits 318 to 330, low bidders were found to be tied. The exhibits, themselves, do not show it. The record does not otherwise show it.

Trial Examiner Norwood: I think possibly you may show that.

Mr. MacIntyre: And the answer to that question
309 will show that fact.

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Trial Examiner Norwood: This objection is overruled. Proceed.

Read the question.

(Question read.)

Mr. Stewart: Well, it seems to me that the question should be, if he wants to ask the witness that, that outside—what is their outside, or is there any additional explanation needed other than that shown on the exhibits as to tied bids. If there is, will you make it,—instead of going into the question of whether they drew it out of the hat.

Trial Examiner Norwood: Well I think this is one way.

Mr. Stewart: Well, I know, but it is just going around the barn. Why not ask him directly. I have no objection.

Mr. Austin: May I ask if these exhibits are numbered in chronological order?

Trial Examiner Norwood: Yes.

Mr. Austin: They are?

Mr. MacIntyre: Chronological and numerical both.

Trial Examiner Norwood: Yes.

Answer the question. Point out which ones of those were awarded by lot.

A. Exhibit 318.

310 By Mr. MacIntyre:

Q. That is, the award that was made under 318?

A. By drawing lots.

Q. Now, will you turn to the next.

A. Exhibit 319, Exhibit 327, Exhibit 330.

Q. Is that all of it?

A. Yes.

By Mr. MacIntyre:

Q. Now, Mr. Dell, I show you Commission's Exhibit, for identification, 302, and ask you to state with respect to that order which was submitted to the Home Lighting Company for that conduit, did your office advise the Home Lighting Company subsequent to the submission of that order to it that it would be permitted to supply conduit of a brand other than the one specified in the order?

Mr. Stewart: Now, I object to that question as evidently implying that Home Lighting was advised in writing; and, if so, I would like the writing produced. It is the best evidence, not the witness' recollection.

Mr. MacIntyre: I am expecting this witness to speak

from what knowledge he has as to what advice was
311 given to this company subsequent to that order.

Mr. Stewart: Well, was it written or oral?

Trial Examiner Norwood: Was it written or oral?

The Witness: The contract was authorized after the order had been in writing.

Mr. Stewart: Was it in writing?

The Witness: Yes, in writing.

Mr. Stewart: All right. I ask that the writing be introduced, not the witness' recollection of six years ago, five years ago.

Mr. MacIntyre: I submit if the witness can answer that question that he be permitted to answer it from his own knowledge and recollection, as to whether Home Lighting Company was authorized to submit another brand of conduit than the one under specification in this order.

Mr. Stewart: I submit that the witness having admitted that the notification to that effect, or whatever effect, was in writing, that the writing is the best evidence, and that the witness cannot be permitted to tell.

Trial Examiner Norwood: Was there a paper that was required to be in writing?

Mr. MacIntyre: I do not know what the requirements were, but I say this—

Trial Examiner Norwood: Would that authority always invariably be in writing?

312 Mr. Stewart: He would have to notify him in writing. Don't you?

The Witness: It must be in writing.

Mr. Stewart: Sure.

Trial Examiner Norwood: The objection is sustained. You may ask him that, if you can account for the absence of the original.

By Mr. MacIntyre:

Q. Can you locate from among any papers that you have such notice?

A. I have before me a letter, dated March 23, 1935, addressed by The Panama Canal to the Home Lighting Company, authorizing them to produce other than—to furnish other than the Mohawk Tubing Company conduit originally offered.

Mr. Stewart: Well, that is the writing which authorizes that change; is that it? Will you let me see it?

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Mr. MacIntyre: Is that sufficient?

Mr. Stewart: I don't know. Let me see what they said.

(Mr. MacIntyre hands the paper to Mr. Stewart.)

Mr. Stewart: Well, there is the writing.

Mr. MacIntyre: Well, are you willing to accept the witness' testimony that there was such authorization given?

Mr. Stewart: If you will add to it, that the material complied with the specifications, yes.

313 Mr. MacIntyre: Specifications or proposals, what he could furnish, any other brand, that is another brand other than the Mohawk.

Mr. Poskanzer: What is the date of that letter?

Mr. Stewart: March 23, 1935.

Mr. MacIntyre: If Your Honor please, I now offer for the record photostats of Commission's Exhibit, for identification, 296, 297-A and B, 298, 299, 300, 301, 302, and 303.

314 Mr. Stewart: I suppose what you want to do is to show that in lieu of the original; is that the idea?

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: On the record.

Proceed.

By Mr. MacIntyre:

Q. Mr. Dell, I would like to ask you on that last question about substitution of brands, what is the policy of your office,—that is, the Panama Canal,—in permitting bidders, such as the Home Lighting Company was in this instance, on Schedule 3028, in substituting brands if the substituted brand meets specifications?

A. We expect the contractor to furnish the brand originally offered unless he is authorized in writing by the Panama Canal to change. It depends a lot on the nature of the material whether we permit a change. On conduit there probably would be no objection to changing to some other manufacturer because it is all standard product.

Q. In other words, if it meets specifications, you do permit the substitution of other brands; is that correct?

A. We do.

319 By Mr. MacIntyre:

Q. Mr. Dell, I show you Commission's Exhibit, for identification, 331-A to C.

Will you please tell us what that is, if you know.

A. This is the official abstract of bids opened August 19, 1941, under Panama Canal Schedule No. 5395.

Q. And it is the official abstract which Commission's Exhibit 330 carries the tabulation of bids?

A. That is right.

Q. Now, is Commission's Exhibit No. 331-A to C, 320 inclusive, an official record of the bids and other transactions of the Panama Canal concerning these proposals and awards made on the bids opened on August 19, 1941?

A. It is.

326 (Whereupon, at 4:05 o'clock p. m., September 18, 1941, the hearing was adjourned.)

329 PROCEEDINGS.

Trial Examiner Norwood: Hearing come to order.

Pursuant to adjournment on yesterday, the hearing in Docket 4452 is now reconvened in Room 332, Office of the Federal Trade Commission, Washington, D. C., at 9:30 o'clock a. m., September 19, 1941. Please note the appearances.

Off the record.

(Discussion off the record.)

Trial Examiner Norwood: Mr. Herman B. Dell, please resume the stand.

HERMAN B. DELL resumed the stand and testified further as follows:

Trial Examiner Norwood: Proceed.

I will state that counsel may hand in their—any corrections to the record, and I think it is reasonable to give the Commission's counsel over the week end to check those lists and let us know whether they agree to them. They have already agreed to one set here, and I will make the order at our next hearing.

Mr. MacIntyre: May I ask if the Reporter has the exhibits that were received yesterday afternoon?

May we proceed?

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335 *Direct Examination (Continued) by Mr. MacIntyre.*

Q. Mr. Dell, I show you Commission's Exhibit 330 and ask you to, if you can, tell us what is the meaning of the letters "A" and "B" that appear before the figures in the column under "Amounts" on that exhibit?

A. The use of the letters "A" and "B" is merely uses the Panama Canal has distinguished between two prices submitted by one bidder on—

Mr. Stewart: Mr. Dell, would you mind keeping
336 your voice up a little please?

The Witness: The use of those letters "A" and "B" is a designation used by the Panama Canal to distinguish between two prices submitted by one bidder under a class. I notice that opposite "A" there is the amount of $16,179.60 which, of course, is equal to the amount as specified by other bidders for what was that amount, that is, as to the delivery of conduit at what place. It covers the identification, conduit delivered at Cristobal with probably some minor modification in the specifications. I haven't got the bid here.

By Mr. MacIntyre:

Q. What is the difference between the seventeen thousand figure and the sixteen thousand figure? Why was the "B" 16,000—17,000 instead of $16,179.60 as the "A" figure?

A. I don't recall what the difference in those prices are without seeing the bid. There is some difference made by the bidder himself.

Q. On two different schedules of bidding?

A. On the same schedule but probably some minor difference in the specifications.

Q. That is, in the type of conduit that was to be furnished?

A. Might have been in the matter of packing. I couldn't say without seeing the bids.

Q. But as to the $16,179.60 figure as bid under "A"
337 and as bid without qualification by the others, without reference to "A" or "B", you are certain that it called for conduit all of a similar specification?

A. Yes, sir.

Q. Now, has all your testimony here, including these

tabulations, as shown by Commission's Exhibits 318 to 330, inclusive, been based upon your knowledge and such as you could refresh your recollection from, these papers that I hold in my hand?

A. Yes, sir.

Mr. MacIntyre: If Your Honor please, I now tender the witness for cross-examination and with those—with the tender I hand the respondents' counsel all the papers thus used by the witness for their use in cross-examination.

Trial Examiner Norwood: That is, supporting data for those sheets—

Mr. MacIntyre: That is true.

Trial Examiner Norwood: —Commission's exhibits what numbers there?

Mr. MacIntyre: 318 to 330, inclusive.

Trial Examiner Norwood: All right. Cross-examine.

Mr. MacIntyre: There is an offer pending also on Commission's Exhibits 296 to 303, inclusive.

Mr. Stewart: Well, now, I am wondering whether, in view of the discussion this morning, Mr. MacIntyre 338 would not get the letter from the Panama Canal to Home Lighting Company, which I thought I had read into the record and make it part of his exhibits as part of the chain of these documents. Would you do that, please?

By Mr. MacIntyre:

Q. Is that here, Mr. Dell?

Mr. Stewart: It is not in here.

Mr. MacIntyre: It is not in this folder, sir.

Mr. Stewart: Yes, it is in there.

Now, I don't know just what the attitude of this particular department is, but, so far as we are concerned, if any department of the Government permits paper taken and to keep the originals, we will agree that they can substitute photostats, because I assume they don't want to break up their records.

Mr. MacIntyre: I have offered photostats of Commission's Exhibits 296 to 303, inclusive.

Mr. Stewart: Oh. In any event, they will have that understanding with us so that they will not break up their records.

Mr. MacIntyre: This letter that is in question there is now in the witness' hands.

Trial Examiner Norwood: Is that marked for identification?

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Mr. MacIntyre: It has not been marked.

339 Trial Examiner Norwood: Mark it for identification as Commission's Exhibit No. 332.

(The document referred to was marked for identification "Commission's Exhibit No. 332.")

By Mr. Stewart:

Q. Mr. Dell, the letter, Commission's Exhibit No. 332, refers to the matter of the substitution of another manufacturer's material in the Home Lighting bid on the Panama Canal Schedule No. 3028; is that right?

A. Yes, sir.

Q. And that is a part of the official records of the Panama Canal?

A. It is.

Q. The original, I take it, was sent to the Home Lighting Company?

A. Yes.

Mr. Stewart: You are offering that, are you not, Mr. MacIntyre?

Mr. MacIntyre: No, but I have no objection to you offering it if you want to, even under the Commission's number. I am offering it. I just feel that the situation has been covered all that is necessary.

Trial Examiner Norwood: Well, if you will accept it as under the Commission's number, as completing the documents there—

340 Mr. MacIntyre: I have no objection to it being received under the Commission's number, but I am not making an offer of it.

Mr. King: Thank you, Mr. MacIntyre.

Trial Examiner Norwood: Have you any objection to the other letters there?

Mr. Stewart: Well, I have not had a chance to look at them.

Trial Examiner Norwood: Well, go ahead.

(Mr. Stewart is looking at some papers.)

Mr. King: At the proper time, sir, I would like to object to Commission's Exhibit No. 332.

Mr. Peyser: May I read Commission's Exhibit No. 332?

Mr. Stewart: Well, is the question there—is there any objection to these documents?

Trial Examiner Norwood: Yes.

Mr. Stewart: Commission's Exhibit No. 296 to No. 303, except, Mr. Examiner, as being covered by the general objection with reference to the N. R. A. material, I see no objection to these documents.

Do the rest of you?

Mr. Gilpatric: I agree with that statement.

Mr. Stewart: Now, Mr. Austin, or Mr. Peyser and Mr. King, pardon me for interrupting you. Everybody has
341 agreed that except as they are covered by the general objection with reference to the N. R. A. contentions, that we have no objection to these documents.

Now, do you want to object? Those are the ones that you saw yesterday.

Now, as I understand it, Mr. Examiner, this document, Exhibit No. 332, is also going in as part of the chain of the story; is that correct, Mr. MacIntyre, as far as you are concerned?

Mr. MacIntyre: I have no objection to it going in.

Mr. Stewart: All right. Now, Commission's Exhibit No. 332 is going in. Mr. King has part of these documents.

Mr. King: Will Your Honor pardon me just a moment?

Trial Examiner Norwood: Yes.

(There was a short pause.)

Mr. Stewart: Well, may I proceed, reserving the right to Mr. King if he has any objection to state it? I should like to go ahead because the time is passing.

Trial Examiner Norwood: Go ahead.

By Mr. Stewart:

Q. Mr. Dell, I notice that—

Trial Examiner Norwood: Wait a minute.

Mr. King: If Your Honor please, I, on behalf of Clayton Mark, object to Commission's Exhibit No. 332 on the basis that it cannot in any way bind Clayton Mark,
342 because on its face it is from the general purchasing officer of the Panama Canal to the Home Light Company, and can be in no sense of the word an admission concerning Clayton Mark, and shows on its face that there is nothing in it that could in any way be material or relevant to the issues in this case so far as Clayton Mark is concerned.

Mr. Stewart: Well, just in order that Mr. King understands, there is no disposition on the part of any of us to insist that this in any way involves Clayton Mark. We

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agree it does not, but it does show, in view of the witness' testimony, the authority for substitution of material, that there was no privilege up to the date, at least, of substituting Triangle.

Trial Examiner Norwood: Well, I am willing to receive that exhibit with the reservation that it does not apply to Mr. King's client at all.

Mr. Stewart: Certainly, it does not.

Mr. Peyser: And I am part of that objection, in so far as the M. B. Austin Company is concerned.

Trial Examiner Norwood: You have the same objection.

Mr. Peyser: As Mr. Stewart has, and the others.

Mr. MacIntyre: If Your Honor please, if it is to be accepted with any qualifications I would object to it. My understanding was that I was not objecting to its
343 receipt for all uses.

Trial Examiner Norwood: As I understand it, it is merely a clarifying qualification.

Mr. Stewart: That is all.

Mr. Peyser: That is all.

Trial Examiner Norwood: Out of the abundance of precaution and zeal for protecting their clients, the counsel have taken this step, and I think it is constructive and commendable.

Mr. MacIntyre: I did not object to it because I understood it was being offered for all purposes.

Trial Examiner Norwood: What are the numbers?

Mr. Stewart: Exhibit 332.

Trial Examiner Norwood: Commission's Exhibits, for identification, 318 to 330, and Commission's Exhibit 332, are received in evidence as shown by the record.

COMMISSION'S EXHIBITS NOS. 318 TO 330, inclusive, and NO. 332 were offered and received in evidence.

Trial Examiner Norwood: Proceed with your cross-examination.

Cross-Examination by Mr. Stewart.

Q. Mr. Dell, I notice that the compilations of the bids cover 11, I think, different bids, beginning in 1935,
344 and ending with one bid in 1941.

Now, I should like to ask, are the bids which you have produced the only bids for conduit with the Panama

Canal authority during the period covered by my question; that is to say, the years 1935 to 1941?

A. No, they are not.

Q. Now, can you tell us to the best of your recollection how many other bids there were on conduit during that period, approximately? I am not pinning you down to any definite period, just approximately.

A. Conduit is bought on stock requisition.

Q. I did not catch that, sir.

A. Conduit is bought on stock requisition which probably come through every couple months.

Q. Well, how much conduit was bought by competitive bidding during the period covered by these bids which are in evidence which you have not tabulated, and which is not before us at present, how much would you say? How many transactions?

A. I—

Mr. MacIntyre: Now, just a moment. Before the question is answered, I would like to object to it unless it is clear that the question relates to transactions apart and aside from any of the transactions involved in any of the tabulations or the testimony which has gone in.

Is that your understanding, Mr. Stewart?

345 Mr. Stewart: I thougt that was the question I asked.

Mr. MacIntyre: Well, I want it to be made clear that that is the case, that it has no application to these, but it is relating to the same transaction.

Mr. Stewart: That is the point of the question.

Mr. MacIntyre: All right. I have no objection.

Trial Examiner Norwood: All right. Answer the question.

A. Without records before me, I would only be making a wild guess on that.

By Mr. Stewart:

Q. Well, you have handled the awards, would you mind making what you choose to call a wild guess? It is an approximation, as I understand it, and not a wild guess. You probably have a pretty good idea how many awards were made as a result of competitive bidding over that period between 1935 and 1941. How many would you say?

A. On the basis of making purchases every couple months, it would amount to a total of 36 purchases, including the ones that have been brought up to trial.

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Q. Well, in other words, to put it another way, if you deduct the ones that are in evidence here the difference is about 25, in addition to those already in evidence—23, then. There are 13 in evidence, approximately.

346 A. That is as well as I could approximate it.

Q. Well, I understand that. I am not pinning you down to any definite figure, but in any event you can ascertain that for us, can you not?

A. Our records show it.

Q. By Tuesday morning you could give us the exact figure as to the number of awards other than those in evidence which have been made by your department over the same period and which are not in evidence?

A. Yes, sir.

Q. Will you be good enough to do that, sir?

Mr. MacIntyre: Now, just a moment. I object to this witness on cross-examination being asked to do something that is without the purview of the direct examination. When we complete with this witness on this cross-examination today with respect to the matters about which he has testified, I shall ask for his discharge, and have it to be complete, and have him not being subject to recall for examination into matters that may be considered as affirmative defense, and as part of the defense of the respondents in this case.

Trial Examiner Norwood: The objection is overruled. Answer the question.

Mr. MacIntyre: May we have the question read that was put to the witness?

Trial Examiner Norwood: Read the question.

347 Mr. Stewart: I asked him if he would give us on Tuesday morning—give either to you or to me—the number of transactions other than the ones in evidence, and he said he would, as I understood it, or could.

Trial Examiner Norwood: What is the answer?

Read the question.

(Question read as follows:

"Q. Will you be good enough to do that, sir?")

Trial Examiner Norwood: Answer the question, Mr. Dell. Can you get that information for us?

The Witness: Yes.

Trial Examiner Norwood: Well, I will request you to get it.

Mr. Stewart: Yes.

By Mr. Stewart:

Q. Now, Mr. Dell, you spoke of the policy of the Panama Canal authority with reference to certain matters.

Now, I should like to know in view of your position as award clerk whether you knew the policy of the Panama Canal authority with reference to compelling bidders to comply with the National Industrial Recovery Act and the codes thereunder during the existence of that code?

348 A. In the days of the N.R.A. we worked in line with the code, but we did not assume any responsibility to see that bidders were in accordance with the code. We were lenient with them, however.

349 Q. Where a code violation was called to your attention as apparently was the contention with regard to the Home Lighting bid, did you look into it?

A. I did.

Q. And had a code violation been established would you have refused to award the contract to that bidder?

A. Not unless the bidder requested relief, I would say.

Q. What do you mean by "relief"?

A. It was our policy to award the lowest bidder in accordance with the specification, and if he claimed his bid was satisfactory and proper, why, we would make the award.

Q. Well, in fact, did your specifications not require the bidder to comply with the National Industrial Recovery Act, or don't you remember that?

A. I don't recall definitely.

Q. Well, would you look at the specification, then, please, and see if it does not so require on this particular Home Lighting bid.

A. Is that 3028?

Trial Examiner Norwood: What is the answer?

(Answer read.)

By Mr. Stewart:

Q. Yes, that is the one.

Mr. MacIntyre: The bid is on schedule 3028 read by this witness into the record yesterday before the tab-
350 ulation was prepared, but from the official abstracts which are now being used for cross-examination.

Mr. Stewart: Yes.

(The witness is looking at the paper as requested.)

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By Mr. Stewart:

Q. Well, just to save your time, are those the specifications?

A. Yes.

Q. We will have somebody here look so we can go on for the moment.

I call your attention to paragraph appearing on page D of Exhibit 294, for identification,—I understand it has not been offered,—entitled "Compliance with N.R.A. Codes." Now, that was the provision which was inserted in the specifications by the Panama Canal authority governing bidders during the existence of the code; is that not right?

A. Yes, that is correct.

Mr. MacIntyre: Now, you are talking about a provision there. We insist that the provision itself be read into the record so we know what is being referred to.

Mr. Stewart: Aren't you going to offer this?

Mr. MacIntyre: No, I am not offering that. There are 30 or 40 pages, but if there is a paragraph containing a provision there, I have no objection to it being read. In fact, I insist on it being read if there is any reference to it.

351

Trial Examiner Norwood: Read it into the record.

Mr. Stewart: I thought that I would read it into the record.

Mr. King: It is not testimony unless the witness reads it.

Trial Examiner Norwood: It is being read into the record by agreement, and it will be testimony.

Mr. Stewart: Mr. Cleaveland, will you read this provision, please.

Mr. Cleaveland (Reading):

"Compliance with NRA Codes—The bidder submitting a bid hereunder thereby certifies that he is complying with and will continue to comply with each approved code of fair competition to which he is subject, and/or if engaged in the trade or industry for which there is no approved code of fair competition, then as to such trade or industry that he has become a party to and is complying with and will continue to comply with an agreement with the President under Section 4(a) of the National Industrial Recovery Act (President's Reemployment Agreement) and that all other conditions and requirements of Executive Order No. 6646, dated March 14, 1934, are being and will be complied with."

Mr. MacIntyre: I agree to that going into the record as the provision.

352 Mr. Stewart: I think there is some more there.

Mr. Cleaveland (Reading):

"The contractor (any bidder to whom an award is made) shall comply with each approved code of fair competition to which he is subject, and if he is engaged in any trade or industry for which there is no approved code of fair competition, then as to such trade or industry with an agreement with the President under Section 4(a) of the National Industrial Recovery Act (President's Reemployment Agreement), and the United States shall have the right to cancel this contract for failure to comply with this provision and make open-market purchases or have the work called for by this contract otherwise performed at the expense of the contractor, and the contractor shall not accept or purchase for the performance of this contract or purchase order or enter into any subcontracts for any articles, materials or supplies, in whole or in part produced or furnished by any person who shall not have certified that he is complying with and will continue to comply with each code of fair competition which relates to such articles, materials, or supplies, and/or in case there is no approved code for the whole or any portion thereof then to that extent with an agreement with the President as aforesaid."

By Mr. Stewart:

Q. Now, in that connection, Mr. Dell, I call your at-
353 tention to Exhibit No. 300, and the last paragraph thereof, the exhibit being a letter from Mr. Healy, Chief of Government Contracts Branch, inquiring of Mr. Flint, the General Purchasing Officer of The Panama Canal, with reference to the alleged violation of N.R.A. Code by Home Lighting Company. The letter refers to the point of delivery as to whether it is to be made in the Canal Zone or within the United States, and this is the part to which I direct your attention: "This is important for the reason that Administrative Order X-13 grants an exception to the provisions of Executive Order 6646 to contracts to be performed in the Canal Zone."

Are you familiar with Executive Order 6646? Do you know what it was?

A. No, I do not.

Q. All right, sir.

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Do you know what Administrative Order X-13 was? If you do not know, just say so.

A. No.

Mr. Stewart: I have no further questions.

Trial Examiner Norwood: Is there any further cross-examination?

Mr. Stewart: Apparently not, sir.

Mr. MacIntyre: Does that complete the cross-examination?

Mr. Stewart: Yes, sir.

354 Mr. MacIntyre: I would like to have this marked for identification as Commission's Exhibit No. 333, please.

(The document was marked for identification "Commission's Exhibit No. 333.")

Redirect Examination by Mr. MacIntyre.

Q. Mr. Dell, I show you Commission's Exhibit, for identification, 333. I will ask you if you have seen a duplicate of that at any time in connection with your official duties as award clerk for The Panama Canal?

(The witness is looking at the paper referred to.)

Trial Examiner Norwood: Do you recognize as having seen it before?

The Witness: I no doubt saw it. They go through the office for notation by all parties concerned.

Trial Examiner Norwood: Well, are you familiar with it?

The Witness: I cannot recall very definitely.

By Mr. MacIntyre:

Q. Well, let me ask you this question, referring again to Commission's Exhibit No. 294 from which Mr. Stewart had read into the recoord—

Trial Examiner Norwood: That is for identification.

Mr. MacIntyre: Yes, for identification.

Q. —from which Mr. Stewart had read into the

355 record a considerable statement about what you require in connection with compliance with the code as set forth in this proposal of yours.

Now, with reference to that I will ask you this question: You do know of your own knowledge—

Mr. Stewart: Is this a question or a statement?

Q. You do know of your own knowledge whether or not The Panama Canal, irrespective of what was stated in proposals it sent out, such as that Mr. Stewart had read into the record, obeyed Executive Orders of the United States President during that period of time?

Mr. Stewart: Now, I do not think the witness is entitled to answer the question because all officers charged with observance of the law are presumed to have observed the law until it is shown they disobeyed it. Of course, we do not need any evidence from Mr. Dell.

Trial Examiner Norwood: Is there another objection; is your objection to the question because it is leading?

Mr. Stewart: Well, I object to it on the ground it is totally irrelevant and immaterial and leading, of course.

Mr. MacIntyre: Well, you attempted—

By Mr. MacIntyre:

Q. Did you attempt to comply with all Executive Orders which modified codes and which modified previous Executive Orders?

A. We did.

356 Q. And to your knowledge did you or any other officers of The Panama Canal ever violate Executive Orders?

A. Not to my knowledge.

Mr. Houston: I object to that.

Trial Examiner Norwood: Overruled.

Mr. MacIntyre: If Your Honor please, I now offer into the record Commission's Exhibit, for identification, 333, and ask that Respondents' counsel concede its identification, authenticity as an Executive Order, No. 6767, as issued by the President of the United States on June 29, 1934, modifying the previous Executive Order 6646, to which Mr. Stewart has just made reference in the record and had an excerpt read into the record.

Mr. Stewart: Do you have any more of these (referring to Exhibit No. 333)?

Mr. MacIntyre: I do not think so.

Mr. Stewart: So far as I am concerned I have no objection to that. I think we ought to have it in the record. That is a 15 percent cut, that is all. Everybody knew that. In other words, the Government got the benefit of a 15 percent price cutting.

Mr. MacIntyre: Without violation of the code.

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Mr. Stewart: Why, certainly. Whatever the order says. That is the order, but everybody knew that.

Trial Examiner Norwood: Is there any objection to
357 it?

Mr. Stewart: As for myself, I do not think you need permission from us or anybody.

Trial Examiner Norwood: It is received as marked, Commission's Exhibit No. 333.

COMMISSION'S EXHIBIT NO. 333 was offered and received in evidence.

Trial Examiner Norwood: Proceed.

358 By Mr. MacIntyre:

Q. To your knowledge did anyone in The Panama Canal ever receive any statement from any Government official to the effect that the Home Lighting Company violated any code in connection with the submission of its bid on February 11, 1935, in this Schedule 3028, about which you testified yesterday?

Mr. Stewart: Now, I object to that as being immaterial because all the question asks is, does this man know of anything, and the record already shows that there was a complaint from Hodkinson.

Mr. MacIntyre: Hodkinson is not a Government man.

Mr. Stewart: Now, that is just the point that I am making about your question, that is the question that we are arguing about, as to whether Mr. Hodkinson—

Trial Examiner Norwood: Well, maybe we can
359 elucidate that.

The objection is overruled.

Answer the question.

Mr. Stewart: That letter hasn't anything to do with it.

Well, you see, Mr. Examiner, the record already shows that Mr.—I assume they were Mr. Dell's superior officers treated the complaint of Hodkinson, the supervisory agent, as an official complaint and investigated it. Now, what Mr. MacIntyre is evidently asking the witness to do is to read Mr. Hodkinson out of the picture altogether, and say that there never was anybody complained, whereas the record shows that there was a complaint.

Trial Examiner Norwood: He is asking this witness his experience on that point whether or not anything came within his knowledge. I think he has a right to answer the question.

Do you want the question read?

The Witness: If you please.

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Poskanzer: If Your Honor please, I think the witness should not be permitted to examine any papers. If he knows, he ought to know.

Trial Examiner Norwood: Yes. Answer the ques-
360 tion directly.

A. Not to my knowledge.

Mr. MacIntyre: That is all.

Mr. Stewart: That is all.

Trial Examiner Norwood: Thank you, Mr. Dell.

Mr. MacIntyre: May we ask that the witness be discharged?

Mr. Stewart: Well, except—

Mr. Houston: Until Tuesday morning.

Mr. MacIntyre: The cross-examination is completed.

Trial Examiner Norwood: I have asked him—

Mr. Stewart: To produce this data.

Trial Examiner Norwood: —to produce certain data there. Now, we are trying to get this whole story. If he can bring anything that is useful to the respondents I want him to bring it, and especially the information requested there as to other bids that are not covered by this exhibits.

Mr. Stewart: That is right.

Trial Examiner Norwood: That is something—

Mr. Stewart: We would like to get the whole picture while we are at it.

Trial Examiner Norwood: Yes.

Mr. MacIntyre: If Your Honor please, I object to the failure to discharge the witness at this time.

Trial Examiner Norwood: Yes. All right.

361 Mr. MacIntyre: He has been cross-examined exhaustively, and the cross-examination completed on all matters about which he testified on direct examination.

Trial Examiner Norwood: He may not be examined on anything else unless the respondents summon him as a witness, anything else than the matter about which he was requested to furnish information. He is confined to that one point, and I shall ask him to come back here Tuesday morning and bring that information as to these other bids.

Mr. MacIntyre: If Your Honor please, though, I just want to point out—

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Trial Examiner Norwood: Now, I have your objection on the record, and the objection is overruled. That is all there is to that.

Call your next witness.

Mr. MacIntyre: Well, may we take an adjournment in the hearings until next Tuesday? I do not want to put on another witness until we have this matter settled because it is going to drag out before the other witness can possibly complete. The same question must invariably be with him, and we have another witness who was not discharged who was on the stand this week, and we must settle the question with respect to them.

Trial Examiner Norwood: No. Call your next witness and we will go right ahead.

362 COMMISSION'S EXHIBITS NOS. 296, 297-A, 297-B, 298, 299, 300, 301, 302, and 303 were offered and received in evidence.

Mr. Stewart: May we have five minutes, sir?

Trial Examiner Norwood: Yes. We will have five minutes' recess.

Mr. MacIntyre: I would like to ask for 15 minutes' recess, if Your Honor please.

Trial Examiner Norwood: All right. We will take 15 minutes' recess.

(There was a short recess taken.)

Mr. MacIntyre: Mr. Dell is on the stand for any cross-examination that these respondents want to make of him.

Trial Examiner Norwood: I have stated that any further examination of him would be confined to that one subject, of any sales to this Panama Canal. He may be recalled for that and for that only.

Mr. MacIntyre: Recalled in what way, as a witness for the respondents?

Trial Examiner Norwood: For cross-examination, and a witness for cross-examination.

Mr. MacIntyre: If Your Honor please, I want the record to show clearly at this time that I have no objection to this witness being called by the respondents as their
363 witness orderly and timely to tell anything that he knows about any purchases of The Panama Canal that happens to be relevant and material to the issues in this case. I do object—want the record to clearly show at this time that I object to this witness not being discharged at this time and being required—

Trial Examiner Norwood: The record already shows that out and counsel is out of order.

Mr. MacIntyre: All right.

Trial Examiner Norwood: Call your next witness.

Mr. MacIntyre: We shall now call Mr. Custer at the instance of the Commission.

A. B. CUSTER was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

Q. Mr. Custer, what is your business and occupation?

A. Purchasing supplies and materials for the Navy.

Mr. Stewart: For what? I didn't get it.

Mr. Gilpatric: Navy. Navy.

The Witness: Navy. My position is special assistant, Purchase Division, Bureau of Supplies and Accounts, Navy Department.

364 By Mr. MacIntyre:

Q. That is of the United States Government, of course.

How long have you been so engaged?

A. About 30 years.

Q. Will you describe the nature of your duties in that position?

A. As special assistant to administer, supervise, formulate policy, procedure, and pass judgment upon bids, awards, and contracts.

Q. You see the records of the bids that are received on these various products purchased by your office?

A. I do.

Q. You have personal knowledge of the records of the bids on the various products, then, purchased by your office?

A. Yes, sir.

Q. Is rigid steel—

Mr. Austin: Excuse me, sir.

Will the witness raise his voice for the benefit of those—

Trial Examiner Norwood: Yes, speak a little louder.

The Witness: Yes, sir.

By Mr. MacIntyre:

Q. Is rigid steel conduit one of the products purchased by your office?

A. It is.

365 Q. And has it been purchased throughout the period that you have been serving in your position?

A. It has.

Q. Mr. Custer, do you have some records of some of your purchases of rigid steel conduit?

A. I have some abstracts of the bids received on rigid steel conduit pipe.

Q. And those abstracts show what?

A. Abstracts show the type of material, quantities, points of delivery, names, and bid numbers, as bid numbers are merely for record purposes, the names of the bidders and the aggregate amount of their bids.

Q. The amounts shown on these abstracts for any one bidder as against amounts shown as bid by any other bidder on comparable merchandise for delivery to comparable places in comparable quantities?

A. I would say for the same merchandise, same points of delivery, same quantities.

Mr. MacIntyre: I ask that these papers be marked for identification as Commission's exhibits, if we may, at this time.

Trial Examiner Norwood: Mark them.

(The documents referred to were marked for identification "Commission's Exhibits 334 to 364," inclusive.)

366 By Mr. MacIntyre:

Q. Mr. Custer, I show you Commission's Exhibits, for identification, 334 to 364, inclusive,—

Trial Examiner Norwood: Go ahead.

(Previous question read.)

By Mr. MacIntyre:

Q. —and ask you to state what they are, if you know.

A. These exhibits are abstracts of bids received on conduit pipe extending over a period at intervals from December, 1934, to March, 1941. Each exhibit is confined to the bids on one particular lot of material, on a particular schedule for a particular opening date.

Q. And what can you say as to the accuracy of those?

Do you vouch for the accuracy and correctness of those tabulations as reflecting the prices bid?

A. I do.

Q. Do you have here the bids themselves upon which they are based?

A. The bids themselves are here.

Q. I notice that in—at the bottom of Commission's Exhibits 334 and 335 that you have a qualifying statement that bid 4 in each of those instances isn't available. It isn't here; is it?

367 A. That bid is the one bid that is missing from the complete group of bids.

Q. Then I notice on 339 that bid 171 isn't available. I believe that there is no such notation made on any other of your exhibits except—with those three exceptions, then, all bids upon which these abstracts are based are here with you; is that correct?

A. That is correct.

Q. And against which, of course, the correctness of the abstracts could be checked?

A. Correct.

Q. Now, I have noticed a notation on some of those bids as to the manner—some of those abstracts, 334 to 364, inclusive, to the effect that you may have made award in some instances by lot to a particular person or a particular firm. Will you explain just what occurred in such instance to which is referred.

A. An award by lot has reference—a lot award on these abstracts means a drawing of the name from two or more tie bidders, bids are tied as to price and all other conditions. That is a rule of long standing and is prescribed by our regulations and instructions in the invitations for bids and the awards thereon. That means that the prices, specification, terms, and conditions generally are in substantial accord one with the other.

368 Q. And will you tell us as briefly as you can the procedure used in making such awards by lot?

A. We have employed various methods at different times, and probably at different times covered the period of these bids by substantially the same general rule with identical results, that is, by assigning the number, or, rather, inserting the number of the bid on a strip of paper and dropping it in a box and drawing a name from the box or the number from the box. Where numbers

are used there is a master list with the number corresponding to the name. The number drawn from the box is given the award. That is, the number ordinarily drawn from the box.

Q. And when awards are made by lot you have no other way of determining the contractor, the man from whom you purchase?

A. No. That is conclusive.

Q. Mr. Custer, I show you two packages of papers. Will you tell us what those are?

A. Those are the Navy Department's permanent record of the bids which are covered by these abstracts.

Q. And all bids are in those packages upon which these abstracts are based, with the three exceptions which I have made reference to?

A. There have been several exceptions.

Mr. MacIntyre: Now, if Your Honor please, I offer into the record at this time as Commission's exhibits
369 these abstracts numbered Commission's Exhibits 334 to 364, inclusive, and with all of the information shown thereon, with the exception of bid No. 4 of—

Trial Examiner Norwood: Just name the exhibit number, why don't you?

(Record read by Reporter.)

Mr. MacIntyre: Change that to read this way: With the exception of references to bid No. 4 on Commission's Exhibit 334; references to bid No. 4 on Commission's Exhibit, for identification, 335; and references to bid 171 on Commission's Exhibit, for identification, 339, and tender along with the abstracts all of the bids upon which they are based.

Mr. Stewart: In other words, I take it what Mr. MacIntyre is saying is he is using the tabulation but he is giving us access to the records from which the tabulations are made; is that correct?

Mr. MacIntyre: Yes, sir; they are all here.

Mr. Stewart: All right, sir.

Mr. MacIntyre: And I tender the witness at this time for cross-examination.

Trial Examiner Norwood: Any objection to the proffer?

Mr. Stewart: Did you say was there any objection?

Mr. Gilpatric: Yes, he asked.

Mr. Stewart: Well, subject to the possible correc-
370 tion, which I assume we will have no occasion to

make, I don't see any objection. The witness has said this is a true and correct abstract of the data in this material here before us—

Mr. Gilpatric: We have our objection as it stands as to any material relating to the N. R. A.

Mr. Peyser: And on the further objection, in behalf of M. B. Austin, that its name does not appear in any of the exhibits as having made any bid.

Mr. Gilpatric: Well, obviously I assume as to those who aren't bidders it certainly wouldn't affect them.

Trial Examiner Norwood: Yes, that is good.

With that understanding, the exhibits are received as marked, Commission's Exhibits 334 to 364.

COMMISSION'S EXHIBITS NOS. 334 to 364, inclusive, were offered and received in evidence.

Mr. MacIntyre: I understand Your Honor's ruling to be that the others are not affected by these except in connection with them on the face of the entire record.

Trial Examiner Norwood: Yes, except as they may be connected, substantially connected.

Cross-examine the witness.

Mr. MacIntyre: With that understanding, does Mr. Peyser have any objection to the form in which these 371 are offered?

Mr. Peyser: No; no objection to form.

Mr. Poskanzer: No objection to form.

Trial Examiner Norwood: Proceed with the cross-examination.

Mr. Stewart: Of course, this is a little difficult, as you appreciate, to have this shoved on you out of a clear sky.

Trial Examiner Norwood: What do you mean?

Mr. Stewart: Well, I will go as far as I can. I take it we are going to adjourn at noon anyway; only a half an hour.

Mr. MacIntyre: I don't want to adjourn until we have completed with this witness. This man is purchasing war supplies and defense supplies for the United States Government, and I think if anyone is vital to the national defense it is this man at this time, and I would certainly like to see that he is permitted to have his cross-examination completed before we adjourn, if we can, today, and thereby be permitted to return to his job.

Trial Examiner Norwood: Well, he may return.

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Complete your cross-examination, if you can, and, if not, we can recall him at some convenient time.

Mr. MacIntyre: That was my request, that we used all of today that is necessary on cross-examination up
372 to the time that we can complete cross-examination of him.

Trial Examiner Norwood: Yes.

Mr. Gilpatric: Well, if this develops, as I suspect it will, that you have selected certain bids from a certain period and you expect us to complete our examination with this witness not prepared to testify as to the other bids, we shall certainly object to any such arrangement.

Mr. MacIntyre: I am tendering this witness for cross-examination on all things that have been covered by the offer and by his direct examination.

Trial Examiner Norwood: All right. Proceed.

Mr. Stewart: I shall proceed.

Trial Examiner Norwood: Proceed.

Cross-Examination by Mr. Stewart.

Q. Mr. Custer, the Navy Department uses considerable quantities of conduit, does it not?

A. It does.

Q. And the period covered by the abstract of bids, as disclosed by the exhibits, is from 1934 to 1941; is that right?

A. They represent the abstracts of bids received during that period. Not necessarily all of the bids. I say not necessarily.

Q. Well, we are coming to that in a moment. I am just speaking about the period.

373 A. Yes; that is correct.

Q. Don't get the idea I am trying to mislead you in any way. I am just saying these documents cover a period between 1934 and 1941.

A. Yes, sir.

Q. Now, was there considerable conduit bought by the Navy Department other than that disclosed by these documents during the same period?

A. There was not considerable.

Q. Well—

A. This is a considerable portion of the conduit purchased during that period.

Q. Well, let me ask you this, then: Why were these particular bids chosen and not all bids brought in?

A. Well, there was no particular reason for choosing. It is—it is representative—it should be well representative because it is a large majority of the bids received over that period.

Q. Yes. Were there any instructions given to you as to what particular bids were to be produced?

A. I don't know that it was—there was any instructions. It was suggested on the face of the records, rather than to attempt to cover everything, to report the bids on certain groups of schedules.

Q. And who made that suggestion?

374 A. That was made by Mr. MacIntyre.

Q. In other words, these documents do not give you the complete picture of the bids on conduit to the Navy Department over the period covered by the documents?

A. When you say "complete picture," I would say yes, I think they do give a complete picture. The picture isn't changed by dropping out one or adding on another.

Q. How many other bids would you say there were in addition to these over the period of 7 years?

A. Without reviewing the record, I—it would be merely a guess, although I can, from a very hasty review of this group here, tell you approximately what are missing. Our system of purchasing conduit is on a semi-annual plan, buying the materials twice a year every six months; and where we have two openings here in one year it is fair to assume that that is everything for the year.

Trial Examiner Norwood: What portion do you think those abstracts cover of the total of rigid steel conduit purchased during those years? Just give us your estimate.

The Witness: By hasty review of this, which I will do, I can give you a very close estimate.

(After a pause) At least 75 percent. Possibly as high as 85.

By Mr. Stewart:

Q. You mean—

375 A. These will cover—

Q. —the remainder of the bids which you have not produced would only be somewhere between 20 and 25 percent of the total—

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A. Yes, sir.
Q. —conduit purchased during the period?
A. By the Bureau of Supplies and Accounts.
Q. Yes; that is what we are talking about. During the years 1934 and 1935 can you refer us to the specifications which were published to bidders for conduit? Are they here?
A. The specifications are referred to in the bids themselves. In referring to 1934 the first opening is in December, so we start with December, '34, not the whole year.
Q. What do you do, just take one of these documents out to see it, or is this all part of one? This is all bound together, isn't it?
A. Bound together. Specifications are given under each lot, schedule.
Q. Where are the '35 ones? Are they in here somewhere?
A. In that other bundle. It is indicated right at the head.
Q. Oh, I see. Oh, here it is.
Mr. Custer, we are a bit confused about this. In addition to the conditions named in your form of bid, I gather that there are additional conditions attached by rea-
376 son of the reference to the standard form of instructions to bidders; is that right, which are not incorporated in your form?
A. That is incorporated in the form by reference.
Q. That is what I meant, by reference.
A. Yes, that is a general instruction.
Q. Yes. What was the—I don't seem to find it here. Maybe you can tell me. What was the condition annexed, if any, in your bid during the N. R. A. days with reference to compliance by the bidder with the provisions of the N. R. A.?
A. A provision is incorporated in the schedule requiring compliance.
Q. I am sorry. It happens to be so abstruse. That is what I am looking for, and I don't know where it is. I am sorry. I don't know where it is. I can't see it. Maybe I can't read.
A. This is '35.
Q. December, '34, would that—yes, here it is.

I show you a document which appears to be annexed to a group of bids for the year '35; is that?

A. '34, December, '34.

Q. I know that, but I mean these—I am talking about the documents. Some of these in '34 and '35; which is it?

A. Those are supplements to the originals.

Q. I see.

Now, the form there, is that the form which was
377 inserted in all bids during the existence of the N. R. A.?

A. That is correct.

Mr. Stewart: Now, I am wondering whether, Mr. MacIntyre, we might have an agreement that we might either copy that or photostat it and—or can we have an agreement that the same—that it is the same language as was read in on the others; do you know? Is it a standard form?

The Witness: It is a standard form.

By Mr. Stewart:

Q. Let me ask you, just to save time, Mr.—

Mr. MacIntyre: I will ask him to read it, if we are referring to something. It will be all right with me. It can be read into the record rather than put the whole batch of papers in.

Mr. Stewart: All right.

By Mr. Stewart:

Q. You, I think, were sitting here when the former witness testified and we read into the record the form of certificate of compliance with the N. R. A. code—

Mr. Robison: It isn't the same as the—

Mr. Stewart: It isn't? Then we will have him read it then.

Mr. MacIntyre: You will save time by having him read this into the record then.

Mr. Stewart: All right.

378 Mr. MacIntyre: The thing I will do is object to this on the ground that it is irrelevant and immaterial. I have no other objections as to the form of it going in.

Trial Examiner Norwood: Objection overruled.

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By Mr. Stewart:

Q. That was the official form of certificate which was required from all bidders during the existence of the N. R. A.; is that right?

A. With slight variations. This is the one applicable to this particular opening date. May have been and, in fact, I know that there was some slight changes in language. No change in substance. The substance is this: The identical form in which N. R. A. compliance was required.

Mr. Stewart: All right.

Mr. MacIntyre: What is the date of that, Mr. Custer?

The Witness: This is December 4, 1934.

By Mr. Stewart:

Q. Well, now, then, when was it that your department abandoned that certificate?

A. Upon the publication of the Supreme Court decision.

Q. The Schechter decision?

A. Yes, sir.

Q. Now, will you—as I understand, Mr. MacIntyre is willing that you should read that certificate in. I can have someone else read it if you don't want to read it.

379 A. "National Industrial Recovery Act—Public No. 67, 73d Congress.

"The following certificate form shall be signed and submitted by all bidders with all bids involving expenditures of Government funds (whether federal or non-federal) in accordance with Executive Order No. 6646, dated March 14, 1934.

"Certificate of Compliance

"It is hereby certified that the undersigned is complying with and will continue to comply with each approved code of fair competition to which he is subject, and/or if engaged in any trade or industry for which there is no approved code of fair competition, then as to such trade or industry that he has become a party to and is complying with and will continue to comply with an agreement with the President under section 4(a) of the National Industrial Recovery Act (President's Reemployment Agreement) and that all other conditions and requirements of Executive Order No. 6646, dated March 14, 1934, are being and will be complied with.

"Provided, that where supplies are purchased that are not mined, produced or manufactured in the United States (sec. 2 Title III of the Act approved March 3, 1933, Public No. 428 72nd Congress), the special or general code of fair practice shall apply to that portion of the contract executed within the United States."

380 Now, that is the certificate. There are other requirements. I take it you wanted the certificate only.

Q. Now, would you mind—I am sorry to impose upon you, but would you mind reading further under the legend "Only bids containing such certificates shall be considered or accepted"? Is there an additional requirement there, or is that the same?

A. On the following page. That continues to the next page.

Q. Well, now, in the hope of saving time then, am I correct in understanding that when a contract is awarded it contained a provision—

A. The same provisions were carried into the contract.

Q. Yes, sir.

By Mr. Gilpatric:

Q. Mr. Custer, you testified in response to a question by Mr. Stewart, that the suggestion had been made by Mr. MacIntyre to you in connection with the selection of the bids that are abstracted in Commission's Exhibits 334 through 364. Now, will you tell us what basis was suggested for making the selection?

A. Yes, I will be glad to, and, in fact, I should have supplemented that statement at the time, and intended to do it. That was brought about in this way: Mr. MacIntyre asked me, knowing that the Navy Department is engaged in a tremendous job of national defense, and we are

381 working,—we have no office hours. Yesterday, just as one illustration, I arose at 4:30 and prepared some data for a conference which we had at 6:30 in the office, and I left the office at 6 o'clock last night and carried with me some matters which were not closed up, which I finished at a quarter of ten, and was up at 5 o'clock this morning again, so that is the way we are working; and I urged upon Mr. MacIntyre that he limit the data which he deemed to be necessary to the absolute minimum, because we do not have time to give attention to needless records or papers, so I suggested to Mr. MacIntyre that he come to

the Navy Department, look over our proposal books, which are large books, and make notes of those which he thought might be of most interest to him, or which he considered to be fairly representative. I assigned a person to go over the records with him when he arrived at, and later on I went over them myself, which seemed to be truly representative of the whole picture.

Mr. MacIntyre evidently found that he could omit very few at my request, so the list was minimized, not at his request, but at mine.

Q. In estimating that the abstracts covered 75 percent, you thought it might be more, but at least 75 percent of the bids during the period in question, did you include all of the lots that were embraced within the particular award?

A. Yes.

382 Q. Or opening of the bid?

In other words, on each of the dates covered by an abstract, all of the lots that were included in that particular opening appear in the abstracts that have been offered in evidence?

A. I could not answer that positively. I believe,—and I did not check particularly for the completion of each opening that was scheduled,—I believe the opening is complete. I cannot state that with certainty.

Q. But your estimate of 75 percent is based on the number of opening dates?

A. Right.

Mr. Gilpatric: I have no further questions.

Trial Examiner Norwood: Is there any further cross-examination?

Mr. MacIntyre: I have a question or two.

Redirect Examination by Mr. MacIntyre.

Q. Now, you have read into the record, Mr. Custer, a statement that you placed into the bid form during the month of December, 1934. I believe you read that into the record?

A. Correct.

Q. Concerning compliance with N. R. A. codes and the like.

I now ask you whether or not that your including that

in such form, and your handling of contracts pursuant
383 to bids which contained such forms, that you were governed, and your department was governed at all by Executive Order No. 6767, dated June 29, 1934, and modification of Executive Order 6646, of March 14, 1934, which is in evidence here as Commission's Exhibit No. 333?

Mr. Stewart: Well, I think we will concede for the sake of the record that the witness will say they obeyed the law.

Mr. MacIntyre: I am asking him another question.

Trial Examiner Norwood: Go ahead.

A. We were governed in the insertion of provisions in our invitation to bid for contract by Executive Order.

By Mr. MacIntyre:

Q. In other words, a bidder submitting a price below his filed price, so long as they did not exceed 15 percent, would feel that he was complying with the code; is that true?

Mr. Stewart: That is objected to as most leading as to what the bidder felt. I do not know how anybody could tell how the bidder felt.

Trial Examiner Norwood: Well, he would be complying with the code, would he not, in your judgment?

The Witness: He would.

By Mr. MacIntyre:

Q. And you did not refuse contracts so long as they were within the limits of this Government order?

384 A. We did not.

Q. And the bidders were informed of that fact, were they?

A. It was a matter of public information. I presume that they were.

Q. Now, Mr. Custer, Mr. Stewart and Mr. Gilpatric have asked you if these were all of the bids that were submitted to the Navy Department on rigid steel conduit during the period involved. Now, keeping in mind that question of theirs, I am going to ask you this question: Are these all of the bids that were submitted to the Navy Department during this period about which we have been discussing on the openings involved in those abstracts, Commission's Exhibits 334 to 364, inclusive, with the exceptions noted on the abstracts?

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A. That is correct.
Mr. MacIntyre: That is all.
Mr. Austin: May I ask one question, Your Honor?
Trial Examiner Norwood: Certainly.

Recross Examination by Mr. Austin.

Q. Mr. Custer, these abstracts of bids, you have noted either "Total Price Bid" or "Price Bid"; does that take into consideration—rather, do the figures shown on the abstracts take into consideration discounts quoted?
A. It does not.
Mr. Austin: Thank you.

385 By Mr. Stewart:

Q. Well, the differences in the discount, of course, make a difference in whether a man is a low bidder.
A. It may.
Q. Yes.
Now, I should like to ask you one other question in view of this question, whether you obey the President's orders: I take it you were also, as a matter of policy, insisting on compliance with the National Industrial Recovery Act while it was in effect?
A. Correct.
Mr. Stewart: That is all.

Redirect Examination by Mr. MacIntyre.

Q. A question on that insisting upon the compliance with the National Industrial Recovery Act. You did not insist upon it any further than is required under Executive Order in here as Commission's Exhibit 333, did you?
A. That is correct. That is all the requirement was.
Q. Now, as far as the question on discounts, which was asked you by Mr. Austin, any information relating to any discounts offered by these respondents on any prices that they bid, as is shown by Commission's Exhibits 334 to 364, inclusive, are clearly set forth in these bids, or on this table, which have been submitted to counsel for the respond-
386 ents for their use in their cross-examination of you; is that correct?
A. That is correct.
Mr. Poskanzer: Mr. Examiner, may I have the Reporter

read the record containing that question asked by Mr. MacIntyre with reference to all of these exhibits, just as he started out a few minutes ago?

Trial Examiner Norwood: The record may be read, as requested.

(Question read as follows:

"Q. Now, Mr. Custer, Mr. Stewart and Mr. Gilpatric have asked you if these were all of the bids that were submitted to the Navy Department on rigid steel conduit during the period involved. Now, keeping in mind that question of theirs, I am going to ask you this question: Are these all of the bids that were submitted to the Navy Department during this period about which we have been discussing on the openings involved in those abstracts, Commission's Exhibits 334 to 364, inclusive, with the exceptions noted on the abstracts?

"A. That is correct.")

Mr. Poskanzer: That only means then—Mr. Examiner, may I ask the witness a question?

Trial Examiner Norwood: Yes.

By Mr. Poskanzer:

387 Q. You mean by that, you have produced here the bids which may relate to the abstracts which are in evidence?

Trial Examiner Norwood: With the exception of.

By Mr. Poskanzer:

Q. Putting it another way, with certain exceptions as noted.

A. Yes.

Q. And the others, in fact, are on a substantial number of bids, about 20 or 25 percent of the conduit purchased during that period, there is nothing here on that.

A. That is correct.

Trial Examiner Norwood: Are there any other questions?

By Mr. Gilpatric:

Q. Mr. Custer, I do not understand the relation between number of bids and number of lots. When I asked you whether all lots on a particular opening date were included, you said you were not sure, yet you say you are very sure all bids are included.

A. The explanation is a lot comprises a group or class of material. A schedule may consist of any one; may consist of one or more lots. It may be any number of lots.

This abstract—these abstracts may cover lot numbers 1 and 2, and may not, possibly may not include lot No. 3 in the same schedule, but it includes all bids on lots 1 and 2,

and if lot No. 3 is not abstracted it obviously does not
388 include anything on lot 3.

It is my belief, however, that where a schedule number has been abstracted that we have covered all lots in that schedule, that I am not certain.

Mr. Gilpatric: Mr. Examiner, in order to avoid calling this witness back, I would like to ask Mr. MacIntyre a question. He does not have to answer it, of course.

Trial Examiner Norwood: Go ahead.

Mr. Gilpatric: Did you, in making this selection of bids to be abstracted, omit any lots in any case where you included the date in any particular opening?

Mr. MacIntyre: Not to my knowledge. I believe, as the witness has stated it is his belief, that all lots on all of the schedules involved on Commission's Exhibits 334 to 364, were included. We tried to do so and we believe that we did.

Mr. Gilpatric: Thank you.

Mr. Stewart: Well, just to complete the record, then, as I understand you, Mr. Custer, that one cannot determine who the low bidder is in any given award by referring to the exhibits numbered Commission's Exhibits 334 to 364, but you must in addition refer to the documents here on the table to determine that because you do not have the discounts shown; is that right?

The Witness: That is correct.

By Mr. Stewart:

389 Q. Now, I also assume that where governmental authorities like yourself are charged with the duty of awarding a bid to the low bidder where there are tied bids, they have some method of determining that, one fair method, and one of them is to drop them into a hat, or drop them into a box, and draw them in secret; is that true, and that is all there is to that?

Mr. MacIntyre: Just a moment?

Q. Isn't that right, sir?

Mr. MacIntyre: Just a moment.

I object to the question because of the characterization in

the questionnaire to whether or not this is a fair method. We are only talking about the methods. Whether it is fair or lawful, or what it is—

Trial Examiner Norwood: The objection is overruled. Go ahead.

By Mr. Stewart:

Q. Isn't that right, Mr. Custer?

A. That is right.

Mr. Stewart: That is all.

Trial Examiner Norwood: Are there any further questions?

Thank you, Mr. Custer.

Call your next witness.

Mr. MacIntyre: I ask that the witness be discharged
390 please.

Trial Examiner Norwood: The witness is discharged.

Mr. MacIntyre: And that he be permitted now to carry back with him the original bids, because they are the official records of the Navy Department.

Mr. Gilpatric: Do I understand that—

Mr. Stewart: If we want to look at these, Mr. Custer, we may come over to your place and look at them and they will be available?

The Witness: They will. They are open to public inspection at all times.

Trial Examiner Norwood: Tell them where to come to you,—at the Navy Building?

The Witness: At the Navy Building, Room 0107.

(Witness excused.)

Trial Examiner Norwood: Have you any other witnesses, Mr. MacIntyre?

Mr. MacIntyre: Yes. I have a witness who will take only a matter of about five or ten minutes. I think we can complete examination before lunch.

Trial Examiner Norwood: Let us take about 2 minutes' recess.

(There was a short recess taken.)

Trial Examiner Norwood: Let us come to order, gentlemen, please.

391 Mr. MacIntyre: I will now ask Mr. Williams to take the stand.

Trial Examiner Norwood: That is S. L. Williams, recalled.

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SAMUEL L. WILLIAMS, was thereupon recalled as a witness for the Commission, and, having been previously sworn, testified further as follows:

Mr. MacIntyre: If Your Honor please, I believe when this witness was on the stand earlier this week that you asked him to report to you. I have asked him to submit to you in connection with that request—

Trial Examiner Norwood: Certain information. What was it, something that the respondents asked for?

Mr. Stewart: Oh, Mr. King, I think, asked him about some documents.

Mr. King: I asked him, if Your Honor please, if he would examine the documents in this cause to determine whether or not they were all of the documents that he had gotten as a result of his investigation.

Direct Examination.

Trial Examiner Norwood: Have you made that investigation, Mr. Williams?

Mr. King: And also the documents—that applies, of course, also to the documents that were omitted, excluded.

392 Trial Examiner Norwood: Yes.

Have you made such an examination?

The Witness: No, I have not made an examination. I did not know what he wanted. I still do not know—I mean, if you make it clear enough I will try to comply with your request, if I know exactly what you desire.

Mr. King: My request is—

Trial Examiner Norwood: Well, as I understand it, you asked him if the documents he submitted here were all the documents he collected in connection with this case.

Mr. King: That is correct, sir.

Trial Examiner Norwood: He said no, did he, or did he not?

The Witness: I said no.

Mr. King: He said no.

Trial Examiner Norwood: And then you asked him if he would make a search and bring back any other documents.

Mr. King: Yes, sir.

Trial Examiner Norwood: And he said he would, did he, or did I request the witness to make a search?

Mr. King: I think you requested, sir, that he do so, and he said he would. That is my recollection.

Trial Examiner Norwood: Well, tell us about that, Mr. Williams. Have you tried? What are the difficulties?

Mr. Stewart: I gather he did not understand it.

393 The Witness: I did not understand I was to select all the material that I had gotten from all sources. If that is what Mr. King requires, why, I assume it is all in the possession of Mr. MacIntyre, but I have not made any attempt to determine just what it was. I had not had examined it.

Trial Examiner Norwood: Well, now, if you want something from this witness in regard to any other documents, why, you may do so later on, but I am going to discharge him now. I hardly think that is a request that counsel has a right to make.

Now, I assumed a few days ago that there might be a few documents on his desk, or something, that he might submit here, but really I do not think it is, or that I will hold him any further on that.

Mr. King: Well, in order to clear the matter up, do I understand correctly, Mr. Williams, that there are a great number of documents in connection with this case that have not been introduced into evidence to date by Mr. MacIntyre; is that correct?

The Witness: I do not know what has been introduced by Mr. MacIntyre, so I could not say. I do not know how many of them there might be.

Mr. King: Well, that is what I asked the witness, to clear up, if Your Honor please.

Trial Examiner Norwood: Do you want to ask any 394 further questions?

Mr. MacIntyre: I would like to ask one.

Trial Examiner Norwood: All right.

By Mr. MacIntyre:

Q. Mr. Williams, what you have collected in the way of documents in your work on this case have been numerous, and have been collected over a period of time, several investigations; is that correct?

A. That is correct.

Q. And you have been investigating on this case how recently?

A. Within the past 2 weeks.

Q. And what was the period of the first investigation that you made?

A. The period of the first one I made was in June, 1940, that is the first time I had anything—made any investigation at all.

Q. You made several investigations between those two dates?

A. Yes, I have.

Mr. MacIntyre: That is all.

Trial Examiner Norwood: Is there any further examination?

You are discharged, Mr. Williams.

(Witness excused.)

Trial Examiner Norwood: Is there anything further?

395 Mr. Stewart: Well, the record may show that in addressing Mr. MacIntyre and the Examiner, as well, in compliance with the request of Mr. MacIntyre, I am submitting on behalf of The Steelduct Company the data requested.

Trial Examiner Norwood: The data as to price cards?

Mr. Stewart: Everything that he asked for. It has everything in here.

Trial Examiner Norwood: What does it consist of, Mr. MacIntyre?

Mr. Stewart: Oh, most everything.

Mr. Robison: What does it consist of?

Mr. Stewart: First, we have the price cards, a group of documents consisting of price cards.

Trial Examiner Norwood: They may be marked for identification as Commission's Exhibit 64-A to 64-Y.

(The documents referred to were marked for identification "Commission's Exhibit No. 64-A to 64-Y," inclusive.)

Mr. Stewart: The other bundle consists of freight rates and delivery charges.

Trial Examiner Norwood: That may be marked for identification as Commission's Exhibit No. 82-A to 82-Q.

(The documents referred to were marked for identification "Commission's Exhibit No. 82-A to 82-Q," inclusive.)

396 Trial Examiner Norwood: Is there anything further?

Mr. Poskanzer: I wish to comply, in response to Mr. MacIntyre's request, and submit four items under delivery charges and freight rates.

Trial Examiner Norwood: For what company?

Mr. Poskanzer: For Cohoes Rolling Mill Company.

Trial Examiner Norwood: That will be marked Commission's Exhibit, for identification, No. 71-A to 71-R, inclusive.

(The documents referred to were marked for identification "Commission's Exhibit No. 71-A to 71-R," inclusive.)

Trial Examiner Norwood: Is there anything further?

Off the record.

(Discussion off the record.)

Trial Examiner Norwood: On the record.

Mr. MacIntyre: If Your Honor please, we have here a group of photostats of documents which I have received from the attorneys for Steel & Tubes, Inc. They purport to be price cards, and they were submitted by the attorneys as price cards of that company. I ask that they be marked with the number which has been reserved for the price cards of that company.

Trial Examiner Norwood: They will be marked for identification as Commission's Exhibit No. 65-A to 65-T.

397 (The documents referred to were marked for identification "Commission's Exhibit No. 65-A to 65-T," inclusive.)

Mr. MacIntyre: I will ask that respondents' counsel now concede that they are records of the price cards of that company as submitted by the attorneys for Steel & Tubes, Inc.

Mr. Austin: Yes.

Mr. MacIntyre: I now have photostats of documents purporting to be price cards of the Steel & Tube Division of Respondent Republic Steel Corporation, and they were submitted to me by the attorneys for the Respondent Republic Steel Corporation as the price cards which they purport to be. I will ask if respondents' counsel will concede that they are the price cards of that division of Respondent Republic Steel Corporation as submitted?

Mr. Robison: So conceded.

Mr. MacIntyre: And I ask that they be marked with the exhibit number, for identification, reserved for such price cards.

Trial Examiner Norwood: Mark them Commission's Exhibit 66-A to 66-D, for identification.

(The documents referred to were marked for identification "Commission's Exhibit No. 66-A to 66-D," inclusive.)

Mr. MacIntyre: I have here a group of documents
398 which were submitted by attorneys for Respondent Steel & Tubes, Inc., under letter dated September 15, 1941, as freight rate compilations and freight rate information and delivery charge information of Respondent Steel & Tubes, Inc., and I ask if respondent's counsel will concede that they are such compilations of freight rate information and delivery charges of Steel & Tubes, Inc., as submitted by the attorneys for that company?

Mr. Robison: So conceded.

Mr. MacIntyre: I will ask that they be marked with the exhibit number which has been reserved for such compilation.

Trial Examiner Norwood: Mark them for identification Commission's Exhibit 83-A to 83-J.

(The documents referred to were marked for identification "Commission's Exhibit No. 83-A to 83-J," inclusive.)

Mr. MacIntyre: I now have a group of documents which I received with a letter under date of September 15, 1941, from the attorney for the Respondent Fretz-Moon Tube Company, Inc., as compilations of freight rate information and delivery charges as published by that company, published and used by that company, and I will ask if counsel will concede that they are the compilations of freight rate information and delivery charges of Respondent Fretz-
399 Moon Tube Company which they are submitted to be.

Mr. Robison: So conceded.

Mr. MacIntyre: I will now ask that they be marked with the exhibit number, for identification, which has been reserved for said documents.

Trial Examiner Norwood: Let them be marked for identification as Commission's Exhibit 85-A to 85-I.

(The documents referred to were marked for identification "Commission's Exhibit No. 85-A to 85-I," inclusive.)

Trial Examiner Norwood: Is that all now?

Mr. MacIntyre: I believe that is all that I have at the moment; and respondents' counsel, as they have indicated, desire to catch early trains and planes,—I would not want to interfere with that this afternoon—but would like to ask

that we convene back here at 9:30 o'clock Tuesday morning, next week, instead of the usual hour, at 10.

Trial Examiner Norwood: Is that satisfactory?

Mr. Stewart: I have no objection.

Mr. Austin: No objection.

Trial Examiner Norwood: The hearing is now recessed to reconvene at 9:30 Tuesday morning, the 23d day of September, 1941, in this hearing room, 332, Office of the Federal Trade Commission.

(Whereupon, at 12:32 o'clock p. m., September 19, 1941, the hearing was adjourned.)

402 PROCEEDINGS.

Trial Examiner Norwood: Pursuant to adjournment on the 19th of September, 1941, the hearing in Docket 4452 is now reconvened at 9:30 o'clock a. m., September 23, 1941, in Room 332, office of the Federal Trade Commission, Washington, D. C.

Please note the appearances.

Call your witness, Mr. MacIntyre.

Mr. King: If your Honor please, Mr. Poskanzer and Mr. Peyser asked me to advise your Honor they will be unable to be here this morning and to call your attention to the understanding we had that everybody's objection inures to everybody.

Trial Examiner Norwood: That is correct. I hope they will be back soon.

Mr. MacIntyre: If your Honor please, I have no witness this morning but there is in the hearing room Mr. H. B. Dell, who has returned pursuant to your instructions that he come back.

Trial Examiner Norwood: He was to bring back certain information.

Mr. Stewart: Yes.

Trial Examiner Norwood: Mr. H. B. Dell is recalled for cross-examination, if any, on the particular subject of—

Mr. Stewart: Bids, bids of other awards.

403 Trial Examiner Norwood: Other awards.

Mr. Stewart: By The Panama Canal.

Trial Examiner Norwood: Yes.

Proceed.

Mr. MacIntyre: If your Honor please, I understood cross-examination of this witness was completed on all subjects but he was asked to bring certain additional information.

Trial Examiner Norwood: There will be no point of getting information, if he could not ask him questions about it—just on the one subject I confined this to.

Mr. Stewart: There is no doubt about it. The record is perfectly plain.

Trial Examiner Norwood: Did you bring the information, Mr. Dell?

Mr. Dell: I did.

Trial Examiner Norwood: Proceed with your cross-examination on that special subject.

H. B. DELL was recalled to the stand and testified further as follows:

Cross-Examination by Mr. Stewart.

Q. Well, Mr. Dell, will you give me the abstract of whatever you prepared?

Mr. Stewart (addressing Mr. MacIntyre): You haven't seen these, either, have you?

404 Mr. MacIntyre: No.

By Mr. Stewart:

Q. Do you mind if I give Mr. MacIntyre one? They are duplicates?

A. Three copies. That particular one covers purchases through the Procurement Division.

Mr. Stewart: Well, I will let you explain, in just a moment.

I will ask that these papers be marked for identification as exhibits.

(The documents were thereupon marked "Respondents' Exhibits 1 to 21," inclusive, for identification.)

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: On the record.

By Mr. Stewart:

Q. Mr. Dell, pursuant to the request of the Examiner, as I understand it, you have obtained from the proper

sources the data indicated in the request of the Examiner of the other day?

A. Yes.

Q. Do these documents marked Respondents' Exhibits 1 to 21, inclusive, which I am now handing you, represent a compliance in full with the request of the Examiner?

A. They do.

405 Q. Now, the first document, Respondents' Exhibit 1, appears to be different from the others. Will you explain what difference, if any, there is as between it and the other exhibit?

A. Exhibit 1 covers purchases of Rigid Steel Conduit by The Panama Canal under Procurement Division Contracts.

Q. Well, now, just for the sake of the record, what is the difference between that situation and the ones in which you buy directly through your own agency, is that the difference, that the Procurement Division purchased for you, rather than your own agency?

A. The Procurement Division contracts are under competitive bidding, the same as The Panama Canal, and we have the right to order under that contract if we desire. We merely place an order with the contractor under the general schedule of supplies and which contract he has won under competitive bidding.

Q. So that Respondents' Exhibit 1 represents an award on that basis, is that it?

A. On that; all bids and abstracts, of course, are in the files of the Procurement Division. We haven't any authority over that.

Q. Now, are the balance of the exhibits from your files?

A. They are.

Q. And they are true and correct compilations of the data indicated thereon?

406 A. To the best of my knowledge.

Mr. Stewart: Well, I should like to ask counsel for the Commission if there will be any disposition to dispute the correctness of these figures?

Mr. MacIntyre: Has Mr. Dell stated that they are correct?

Mr. Stewart: Yes, to the best of his knowledge.

Mr. MacIntyre: I accept his statement that they are correct.

Mr. Stewart: Well, so do I.

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By Mr. Stewart:

Q. This Exhibit No. 1, does this exhibit detail a different award, is that the significance of it, in other words, orders?

A. Orders.

Q. Well, then, to clear the record, as I understand it, on Respondents' Exhibit No. 1, these represent contracts made by the Procurement Division, is that correct?

A. Orders placed by The Panama Canal at various times under the Procurement Division contract.

Q. Yes, but do these then represent different contracts, these items on No. 1?

A. I presume when The Panama Canal places an order with some manufacturer that you consider that a contract.

Mr. Stewart: Do I understand that the Examiner will take these exhibits now, if I offer them, as part of the
407 Respondents' case? I assumed that you held them.

Trial Examiner Norwood: I think it is the better practice to save those and put them in when you put in your case, offer them when you are offering your case; mark them for identification.

409 *Voir Dire Examination by Mr. MacIntyre.*

Q. Mr. Dell, referring to Respondents' Exhibit for identification 1, I will ask you if you know, and whether the records of The Panama Canal show, who the bidders were on any of the lots on which those awards were made?

A. They do not.

Q. Does The Panama Canal have any records at all which would indicate who those bidders were?

A. They do not.

Trial Examiner Norwood: How long ago was that, what is the date?

Mr. Stewart: 1940, I think.

Mr. MacIntyre: 1940-1941.

410 Trial Examiner Norwood: Why don't they have those records?

The Witness: The bids and abstracts of bids are in the records of the Procurement Division.

Trial Examiner Norwood: Oh.

By Mr. MacIntyre:

Q. You had nothing to do with the taking of bids or handling of them?

A. Not a thing.
Q. And have never seen them?
A. No, sir.

By Mr. Robison:

Q. That is the Procurement Division of the Treasury Department, is it not, Mr. Dell.
A. Yes, sir.

By Mr. MacIntyre:

Q. Now, referring to Respondents' Exhibit 3 for identification, the name of the third bidder, can you tell us whether or not that should be M. B. Austin Company instead of—
A. That is correct.
Q. N. B.?
A. Is that N? Yes, it should be M. B. Austin & Company.

Mr. Stewart: So agreed.

Mr. MacIntyre: If we may now determine which of the copies that have been handed to me by the re-
411 spondents' counsel have been given particular numbers for identification as Respondents' Exhibit, I believe that that would be all that we would care to engage in in the way of examination.

Trial Examiner Norwood: Well, I think you may do that.

Mr. MacIntyre: May we use them?

Mr. Stewart: Yes, sure, of course. I think they are in order unless you have changed yours.

That is all. Thank you, Mr. Dell, that is all as far as I am concerned.

Trial Examiner Norwood: Thank you, Mr. Dell.

Mr. MacIntyre: May we ask that the witness be discharged?

Trial Examiner Norwood: Yes, the witness is discharged.

(Witness excused.)

Trial Examiner Norwood: Call your next witness.

Mr. MacIntyre: If your Honor please, we have documents here which we would like to handle in connection with some previous stipulations. For that reason we do not have present at this time a witness. We will handle the documents as well as make reference to still other documents which we desire.

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Trial Examiner Norwood: Proceed.

Mr. MacIntyre: I would like at this time to note
412 on the record notice to Respondents' counsel to produce the consigned stock agreement of the following companies, which were entered into subsequent to the time that the Organization Service Corporation became affiliated with and began work for the respondent.

Mr. Robison: I do not understand the meaning of the reference to contracts entered into. That would seem to indicate a notice to produce specified closed contracts between two parties.

Mr. MacIntyre: I am merely asking now for the forms of those contracts which were used in executing contracts during that period of time, that is between December 31, 1936, and July, 1938.

Trial Examiner Norwood: Well, now, you asked for signed docket agreement.

Mr. Robison: Consigned.

Mr. MacIntyre: Consigned stock agreement.

Trial Examiner Norwood: That is a blank, is it?

Mr. Stewart: It is a form.

Trial Examiner Norwood: A blank form?

Mr. MacIntyre: It is a form, but we want only those forms which were actually used in executing contracts on consigned stocks by the respondent during the period December 1, 1936, and July 1, 1938, and as used by the following companies:

413 General Electric.
Youngstown Sheet & Tube Company.
Steelduct Company.
Republic Steel Corporation through any subsidiary or division thereof.
Fretz-Moon Tube Company.
Central Tube Company.
Clayton Mark & Company.

I would also like to give notice on the record to respondents' counsel to produce specific building contracts in forms which were used in purchases of conduit for use on specific buildings in orders of sizes up to 20,000 feet and in orders of from 20,000 to 40,000 feet. There were two particular forms used for those two different quantities by the respondent during the period of December 31,

1936, and July 1, 1938, and we would like those as used by the following companies:

Cohoes.
General Electric.
Youngstown Sheet & Tube Company.
Clayton Mark & Company.
Triangle Conduit & Cable Company, Inc.
M. B. Austin Company.
Laclede Tube Company and Laclede Steel Company.

Spang Chalfant, at any time since it began using 414 such contracts.

And these others for the period of December 31, 1936, and July 1, 1938:

Walker Brothers.
Steel Duct Company.
Republic Steel Corporation, through any of its subsidiaries or divisions thereof.
Fretz-Moon Tube Company.
Central Tube Company.

I would like to, if it is convenient for the respondents, to submit those, to submit them to me at the time when the hearings are being held in New York opening on Monday, September 29th.

Mr. King: If your Honor please, as far as Clayton Mark is concerned, I think that will be an impossibility because I think it would take a longer time than that to go over the files to produce what Mr. MacIntyre wants, because right at the moment they are right up to their necks in defense work, and they just can't take the time to do it.

Trial Examiner Norwood: Well, let counsel produce them as soon as convenient.

Mr. Robison: Off the record.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Mr. Robison: On the record, Mr. Examiner.

415 Trial Examiner Norwood: On the record.

Mr. Robison: It has been made clear by discussion off the record that what is requested in the case of consigned stock agreements is in the form of agreement which was first put into effect during the period that Mr. MacIntyre has mentioned, that is subsequent to December 31, 1936, and for Youngstown Sheet & Tube Company I will

state now that there are not and never have been any such agreements which can be produced or form of agreements.

Mr. MacIntyre: I have some papers here which I would like to have marked for identification as Commission's Exhibit.

(The documents were thereupon marked "Commission's Exhibits 365 to 383, inclusive, 384-A and B, 385 to 399, inclusive, 400-A to F, 401-A and B, 402, 403-A, B and C, 404, 405, 406, 407 and 408-A and B," for identification.)

416

Mr. King: If your Honor please, in connection with Mr. MacIntyre's recent request for copy of consigned stock agreements, I would like the record to show that the investigator of the Federal Trade Commission presented himself at the office of Clayton Mark some time ago and was furnished copies of Clayton Mark's consigned stock contracts.

Trial Examiner Norwood: How about that?

Mr. MacIntyre: It is my information that the contract for which I have called was not furnished, that is for that period of time.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: On the record.

Mr. King: My information, sir, is that my client made no change in the form of its consignment contract.

Trial Examiner Norwood: Proceed.

Mr. MacIntyre: If your Honor please, I have these documents marked for identification as Commission's Exhibits 365, 366, 367, 368 and 369. I will ask counsel for respondents to concede that they are genuine and authentic freight rate schedules and supplements thereto as prepared for the Rigid Steel Conduit Association by respondent Charles Donnelly, over the name of that Association, and which were in turn distributed by that Association to its members during the period January 1, 1937, to and including June 15, 1937.

417

Mr. King: If your Honor please, so far as Clayton Mark is concerned, we have produced for the record all of the freight rate schedules and supplements in our possession.

I know nothing about documents Mr. MacIntyre is now presenting, therefore I can conscientiously make no admission concerning them.

Mr. Austin: If your Honor please, as counsel for the Wholesalers Association, I could not deny, neither could I admit.

Mr. Gilpatric: On behalf of Youngstown Sheet & Tube Company, which contends it was not a member of the Association during this period and therefore may not be within Mr. MacIntyre's statement, we nevertheless want to make it clear that we do not concede Youngstown received these freight rate schedules and supplements that are referred to as Commission's Exhibits 365 to 369.

Mr. MacIntyre: I do not believe I can get any direct response to my request for concession.

May I have it read?

Trial Examiner Norwood: Read the statement of Mr. MacIntyre.

(The statement was read.)

Trial Examiner Norwood: Will any of the counsel concede that?

418 Mr. Welch: The Organization Service Corporation—I do not know what the facts are. I would like to know what the facts are.

Mr. MacIntyre: Well, I will ask Mr. Houston, from whom I secured these in the office of Mr. Charles Donnelly, one of the respondents, if he can concede in accordance with the request that I have made.

Mr. Houston: If your Honor please, in behalf of Mr. Donnelly I concede the fact that these documents were produced from Mr. Donnelly's files, and Mr. Donnelly informs me that he prepared them, and beyond that on Mr. Donnelly's behalf I can not go.

The bulletins themselves show something on their face. If Mr. MacIntyre wants to offer them for that on behalf of Mr. Donnelly I could not concede any more than that.

Mr. MacIntyre: Well, I understand Mr. Houston does concede that these documents were prepared by Mr. Donnelly and were furnished to us by Mr. Donnelly.

Mr. Houston: That is correct, sir, yes, sir, that is correct.

Mr. MacIntyre: And that they are copies of others that he prepared and which were used in the industry.

Mr. King: No, he did not go that far.

Mr. Houston: No. On behalf of Mr. Donnelly I can guarantee what I said heretofore.

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419 Mr. MacIntyre: That at least they were prepared by Mr. Donnelly.

Mr. Houston: That is right.

Mr. MacIntyre: And they were furnished to me by Mr. Donnelly through you.

Mr. Houston: That is true.

Mr. MacIntyre: If your Honor please, I now offer for the record Commission's Exhibit 365 to 369, inclusive, as freight rate schedules and supplement thereof which were prepared by the respondent Charles Donnelly, and which were used at least in some manner by respondent, Rigid Steel Conduit Association.

Mr. Stewart: Well, the latter part of the offer is—the offer insofar as it undertakes to establish by the use of the documents themselves that they were used at least in part by the Rigid Steel Conduit Association, which I assume is intended to cover the respondents who were then members, is objected to for the reason that an offer to prove that they were used in part is of no moment and immaterial; and further, there is no proof that schedules were used by the Rigid Steel Conduit Association or the members thereof, nor is the extent of the use of them established.

Trial Examiner Norwood: Is there any further objection?

Mr. King: Well, I object further on the ground that
420 those documents can not bind any respondent. He has offered copies of his freight schedules and supplement used by him in evidence to Mr. MacIntyre, that is, I mean produced for Mr. MacIntyre and offered by Mr. MacIntyre in evidence.

Mr. Stewart: I should like you to understand the point of my objection. Frankly, I have never seen those documents, and I do not know whether they were used. I am inclined to think they were, but I would at least like to have the opportunity of ascertaining before I am asked to make a concession. If that is a fact, I will admit it, but I do not like to be put in the position of not objecting when I do not know what the facts were.

Mr. MacIntyre: Well, I certainly assumed a lot when I started this morning in assuming that respondents' counsel knew what the facts were with respect to these. I do not believe that I would have offered them otherwise at this time, without first asking them to ascertain those facts. So I will withdraw the offer at this time, and ask counsel for the respondent to attempt to ascertain on or before the

morning of the 29th of September, when we meet at New York for a hearing on that day, whether or not the documents of which Commission's Exhibit 365 to 369, inclusive, are duplicates of documents which were distributed by the Rigid Steel Conduit Association to its membership or at least part of the members for their use.

421 Mr. MacIntyre: If your Honor please, I renew at this time my offer on Commission's Exhibit 367 to 369, inclusive, and offer—

Trial Examiner Norwood: Your last offer contains Exhibits 365 to 369?

Mr. MacIntyre: Commission's Exhibits 365 to 369, inclusive.

Trial Examiner Norwood: You are renewing that offer?

Mr. MacIntyre: Yes. I renew that offer and at this time ask in that connection that Mr. Houston concede that Commission's Exhibit for identification 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 382, 384-A and B, 385, 386, 387, 388, 389, 390 and 391 are genuine and authentic documents of what they purport to be on their face and which were furnished to me by him as documents coming from the files of respondent, Charles Donnelly.

Mr. King: Off the record.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

422 Trial Examiner Norwood: On the record.

Mr. Houston: These are, Commission's Exhibits 370 to 391, inclusive, are genuine and authentic documents produced from the files of respondent, Charles Donnelly.

Mr. MacIntyre: And are what they purport to be on their face.

Mr. Houston: Well, I take it that is not necessary.

Mr. MacIntyre: Carbon letters or carbon copies of letters or of whatever they purport to be.

Mr. Houston: They are carbon copies of letters, yes.

Mr. MacIntyre: Or freight schedules and the like, as they purport to be.

Mr. Houston: I do not understand you, sir. I mean, I think they talk for themselves. I can not say anything more that would not be right in the face of them; I can not go any further.

Trial Examiner Norwood: You offered all of them, then?

Mr. MacIntyre: Well, I have not come to an offer of those yet, because we are going on to some more documents

before we complete the offer, but I am merely asking at this moment for that concession which we now ask.

So I will go on with a further request.

Mr. Stewart: Just so that this does not get con-
423 fused, as I understand it, the first four or five documents, beginning with Commission's Exhibit No. 365 are offered again.

Trial Examiner Norwood: To Commission's Exhibit 369, he reoffers them.

Mr. Stewart: Yes.

So I renew the same objection, to keep the record straight, so we do not start all over again on something else, and the record appears that I have not objected.

Trial Examiner Norwood: Yes.

Mr. Stewart: Especially in view of the fact that it is admitted Mr. Booth, who is alleged to have distributed the documents, will be available as a witness on Thursday.

Mr. Taylor: If your Honor please, I believe it is understood, isn't it, that all the objections made to the exhibit, Commission's Exhibits 365 to 369, are renewed now for all respondents?

Trial Examiner Norwood: That will be understood, yes.

Mr. MacIntyre: We will add more to that offer and have it all considered as one.

Mr. Stewart: I have not seen them, so I do not know where they are.

Mr. MacIntyre: They are not included in the offer yet.

I merely asked for a concession concerning these when-
424 ever they are offered.

Mr. Stewart: I thought you had made an offer. That is why I was bothered.

Mr. MacIntyre: There is an offer of Commission's Exhibits 365 to 369, but not on these. I am merely taking up a concession on these.

I now make reference to Commission's Exhibits for identification, 392, 393, 394, 395, 396, 397, 398, 399, 400-A to F, inclusive, 401-A and B, 402, 403-A, B, and C, 404, 405, 406, 407 and 408-A and B.

And will ask Mr. Houston, with respect to all of them except Commission's Exhibits 407 and 408, if he will concede that they are authentic and genuine documents as they purport to be on their face and were produced by and from the files of National Electric Products Corporation as respondent here (handing the papers in question to Mr.

Houston) as they purport to be on their face or in the certifications of the genuineness on the reverse sides thereof.

(There was a short pause.)

Mr. MacIntyre: Are you prepared to make any concession on that, Mr. Houston?

Mr. Houston: Commission's Exhibits 392 to 406, inclusive, are genuine, authentic documents produced from the files of the National Electric Products Corporation.

Mr. MacIntyre: That is as they are shown by their face and the certifications on the reverse side thereof to be, is that correct?

425

Mr. Houston: That is correct, in accordance with the certification.

Trial Examiner Norwood: What became of Commission's Exhibits 407 and 408?

Mr. MacIntyre: Will you read the statement of Mr. Houston, please?

(Statement read, as follows:

("Commission's Exhibits 392 to 406, inclusive, are genuine, authentic documents produced from the files of the National Electric Products Corporation.")

Trial Examiner Norwood: Proceed.

Mr. MacIntyre: Now, if your Honor please, with respect to Commission's Exhibits for identification 407 and 408-A and B, I will ask Mr. Robison and Mr. Gilpatric if they will concede that they have been certified to as being genuine, authentic documents of which they appear to be by Mr. Gentholts, counsel for respondent Republic Steel Corporation, Fretz-Moon Tube Company and Steel & Tubes, Incorporated?

Mr. Stewart: May I suggest this, that where Mr. MacIntyre produces a document which contains the certification form and signature by any one of the counsel here, or of the respondents that in the absence of a repudiation by anybody around the table, that he assume that the signature is genuine, and there will be no repudiation on the part of any of us, to save all this time.

426

Trial Examiner Norwood: It may be taken.

Mr. Stewart: Yes. That was the whole idea of this.

Trial Examiner Norwood: The point is well taken. We are taking up too much time here repeating something that the counsel for the Commission already has in writing.

Mr. Gilpatric: We won't challenge it.

Mr. Robison: I was just going to make a similar sugges-

tion, Mr. Examiner. I think we can save a great deal of time.

Trial Examiner Norwood: I think if counsel will have his exhibits marked and offered in evidence, then if there is a dispute of the signature, it will be the duty of the respondent to raise the point.

Mr. MacIntyre: And it will be taken as true and correct certifications and authentic certifications in the absence of objections to the contrary.

Trial Examiner Norwood: That is right.

Mr. Austin: If you will, just state as you offer them, sir, who certified them.

Mr. MacIntyre: And if it is not objected to, the contrary—

Mr. Austin: Let it go.

Mr. MacIntyre: —the certifications are to be taken
427 as genuine.

Mr. Stewart: Yes.

Trial Examiner Norwood: That is right.

Mr. MacIntyre: Well, we can save a lot of time if the respondents are willing to stay—

Mr. Stewart: I thought that was the idea.

Mr. MacIntyre: I was hoping for something like that, but I wanted to make doubly sure that we were all right.

Now, if your Honor please, with respect to Commission's Exhibits for identification 407 and 408-A and B, I submit those as genuine and authentic documents of which they purport on their face to be and in the certifications on the reverse side thereof as made by the attorneys for The Republic Steel Corporation, Steel & Tubes, and Fretz-Moon Tube Company.

Trial Examiner Norwood: What certifications were they?

Mr. Stewart: A. J. Getholts.

Mr. MacIntyre: Mr. Getholtz.

Trial Examiner Norwood: What numbers are they?

Mr. MacIntyre: And I now add to the pending offer of Commission's Exhibits 365 to 369, inclusive, all documents bearing the numbers to which reference has been made since I renewed my offer of Commission's Exhibits 365 to 369.

Mr. King: Off the record.

Mr. Stewart: I want this on the record, so we know
428 where we are.

I assume for the sake of this offer, Mr. MacIntyre,

that you are offering the documents subsequent to the freight rate bulletins to prove—

Mr. MacIntyre: May I be pardoned just for a moment?

Trial Examiner Norwood: Yes, sir.

(There was a short pause.)

Mr. MacIntyre: I believe without reading the numbers of those the record is sufficiently clear. If need be, the reporter can read all the numbers.

Trial Examiner Norwood: No. The pending offer includes Commission's Exhibits for identification 365 to 408-A and B, inclusive.

Are there any objections?

As suggested by counsel, counsel for the respondents may take the time to examine these documents in order to state their objections thereto. In the meantime, counsel for the Commission may proceed to offer other documents.

Go ahead.

Mr. MacIntyre: If your Honor please, I now offer into the record after identification on the record documents
429 dealing with the freight rate compilations and delivery charge booklets by these respondents under the numbers which you assigned to them last week, but I want to ask that I be given leave to withdraw any portions of them on which we can agree, that is, pursuant to a stipulation with respondents' counsel when we can show that they are duplicates, or the manner in which they have been used by means of stipulation.

Mr. Robison: Now, Mr. Examiner, I may be wrong, but this appears to me to be the result of desire to put pressure on counsel for respondent on a matter concerning which in a case of the delivery charge books there is no resistance and no occasion for pressure. We have, I think, arrived with Mr. MacIntyre at a concession which we at least are prepared to make, and I think that the other counsel for the other respondents are prepared to make it, which will cover the entire story of the delivery charge books, and unless Mr. MacIntyre has reason to think that there are other additional facts concerning them he wishes to put in, I see no occasion to mark in evidence here some 12 or more, yes, it will be double that, probably 24 or more delivery
430 charge books concerning which there can be no possible question.

More than that, we are seriously considering whether we can not arrange a similar concession which will cover the

freight books, and make it unnecessary to put 30 or 40 perhaps of those in evidence, so I would suggest that Mr. MacIntyre withdraw his offer for the time being, and if we can not arrive at suitable concessions to cover it in very brief space on the record, why then they can be put in at any time.

Mr. MacIntyre: Well, of course, my offer was qualified with a statement that I be permitted leave to withdraw as soon as we could stipulate. I did not propose, however, through the offer to bring any pressure to bear upon anyone, and I will, since it is expressed as it is, withdraw my offer at this time with the hope that by 2 o'clock this afternoon we will be able to make some statement which would obviate the desire and the necessity of offering some of these delivery charge booklets and the freight rate compilations.

Mr. Robison: If you would like, I will make on the record now an offer of a concession concerning the delivery charge books.

Mr. MacIntyre: Off the record.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: On the record.

431 By agreement of counsel a recess may be taken until 2 o'clock this afternoon to enable counsel to agree on certain documents which have been offered here.

Mr. MacIntyre: And the counsel, of course, are retaining for their study between now and 2 o'clock the pending offer of Commission's Exhibit for identification 365 to 408, inclusive.

Trial Examiner Norwood: We will take a recess now at 11:30 a. m. until 2 p. m.

(Whereupon, at 11:30 a. m. a recess was taken until 2 p. m.)

432 Afternoon Session—2 P. M.

Trial Examiner Norwood: Hearing come to order. Proceed.

Mr. Robison: I am prepared to offer on the record the concession concerning delivery books that was referred to before the mid-day adjournment. We offer to concede, but because some of the counsel for respondents are not now present, reserving to counsel for any respondent the right to disclaim this offer of concession in whole or in part either on the record or by notice to the Examiner within 10 days from this date, that a printed pamphlet entitled "Delivery Charges" dated November 15, 1930, which has been marked for identification Commission's Exhibit 89 was compiled at or shortly before that date by the chief clerk of the Conduit Division of the Sales Department of the respondent, the Youngstown Sheet & Tube Company for the use of that company and its employees and customers and was printed by said, the Youngstown Sheet & Tube Company, in its own print shop and copies thereof were distributed by it to its sales offices, salesmen, accounting department, agents and customers; that thereafter other respondent manufacturers of rigid steel conduit, including Cohoes Rolling Mill Company, Triangle Conduit and Cable Company, Inc., Walker Brothers, Enamelled Metals Company, Steelduct Company, Steel and Tubes, Inc., Fretz-Moon Tube Company, Inc., Garland Manufacturing Company,
433 Clifton Conduit Company and Clayton Mark & Company, requested said, the Youngstown Sheet & Tube Company, to print four and furnish to them respectively copies of said pamphlet of delivery charges, and in response to such requests said, the Youngstown Sheet & Tube Company, printed additional copies thereof which were in all respects duplicates of said pamphlet first printed (Commission's Exhibit 89), except that the covers thereof were not included, and furnished for a money consideration copies thereof to such other respondent manufacturers who respectively made distribution and use thereof substantially as stated above in the case of said the Youngstown Sheet & Tube Company; that thereafter said respondent, the Youngstown Sheet & Tube Company, compiled and printed in its print shop a pamphlet entitled "Delivery Charges for Youngstown

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Buckeye Conduit, Couplings and Elbows" dated November 15, 1930, as revised January 1, 1938, which has been marked for identification Commission's Exhibit 73-B for its use and distributed copies thereof to its sales offices, salesmen, accounting department, agents and customers; that the following named other respondent manufacturers respectively caused to be printed for them in a print shop or print shops, other than that of said the Youngstown Sheet & Tube Company, duplicates of said last mentioned pamphlet of delivery charges, except as to the cover thereof, and caused the same to be bound in covers
434 bearing their respective names and used and distributed the same to their respective sales offices, salesmen, accounting departments, agents and customers, namely, Cohoes Rolling Mill Company, Triangle Conduit and Cable Company, Inc., Walker Brothers, Enamelled Metals Company, Steelduct Company, Steel and Tubes, Inc., Fretz-Moon Tube Company, Inc., Garland Manufacturing Company, Clifton Conduit Company, Clayton Mark & Company and Spang Chalfant.

Trial Examiner Norwood: Now, off the record.

(Discussion off the record.)

Mr. MacIntyre: If your Honor please, I now offer into evidence Commission's Exhibit for identification 73-B which has been certified to by Mr. Robison, counsel for the Youngstown Sheet & Tube Company, as a genuine and authentic booklet carrying the delivery charges of the Youngstown Sheet & Tube Company on Youngstown Buckeye Conduit Couplings and Elbows, dated November 15, 1930, as revised January 1, 1938. I think the identification is conceded by all, that booklet being what I have described.

Trial Examiner Norwood: Any objections? Received as marked.

COMMISSION'S EXHIBIT NO. 73-B was offered and received in evidence.

Trial Examiner Norwood: That is a bound booklet; 435 is it?

Mr. MacIntyre: It is a bound booklet.

Trial Examiner Norwood: How many pages?

Mr. MacIntyre: Of 32 pages, numbered pages, a printed booklet.

Trial Examiner Norwood: That is 73. Go ahead.

Mr. Austin: If your Honor please, may I ask a question, please?

Trial Examiner Norwood: Go ahead.

Mr. Austin: What is the effect of this statement of Mr. Robison's? Is it a concession or offer to concede or—I listened to him say that "subject to 10 days disclaimer by other counsel."

Mr. MacIntyre: It is a concession, as I understand it, made by Mr. Robison concerning facts touching each of the companies mentioned by him.

Mr. Austin: And only those companies?

Mr. MacIntyre: Well, he only mentioned certain companies. The facts as to those are conceded by him to be facts unless any one of them is specifically disclaimed by counsel for any one of those companies.

Mr. Austin: Within 10 days?

Mr. MacIntyre: Yes.

Trial Examiner Norwood: Yes.

Mr. MacIntyre: And then, of course, only insofar
436 as the disclaimer would go by the man making it.

Mr. Austin: As I understand it, then, as to any respondents not named in the concession, the concession has no effect?

Trial Examiner Norwood: Well, not as such. The facts admitted though are applied as they may logically and justly be.

Mr. MacIntyre: Off the record.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Mr. MacIntyre: I will ask Mr. Bozeman to concede that Commission's Exhibits for identification 72-A, 72-B, 72-C, D, E, F, G, H, I, J, K, L, M, N,—I don't know whether it is necessary to repeat those. They run through to Z-9; it is A to Z-9, inclusive—are booklets of delivery charges, freight rate schedules, of the General Electric Company which have been submitted by Mr. Gerard Swope, Jr., as such booklets of the General Electric Company.

Mr. Bozeman: Yes, I so concede, subject to check in the event I find the concession is incorrect in any particular.

Mr. MacIntyre: If your Honor please, I now offer into evidence this set of freight rate booklets and delivery charge booklets of the General Electric Company.

Trial Examiner Norwood: Now, that is 72-A to Z
437 what?

Mr. MacIntyre: A to Z-9. It is a series of—

Trial Examiner Norwood: A to Z-9, 72.

Mr. MacIntyre: Series of booklets bound together by staples.

Trial Examiner Norwood: Any objection? It is received as marked.

COMMISSION'S EXHIBITS NOS. 72-A to 72-Z-9 were offered and received in evidence.

Mr. MacIntyre: If your Honor please, I now offer into evidence Commission's Exhibits for identification 73-C and 73-D and will ask Mr. Robison to concede the fact that they are authentic and genuine freight rate bulletins and corrections thereto of the Youngstown Sheet & Tube Company.

Mr. Robison: I think our concession is already endorsed on the back of them. As I understand it, according to the concession made this morning, that goes unless somebody questions that.

Trial Examiner Norwood: Yes. What is that, C and D?

Mr. MacIntyre: Yes; 73.

Trial Examiner Norwood: Is there any objection to the proffer? Received as marked.

438 COMMISSION'S EXHIBITS NOS. 73-C and 73-D were offered and received in evidence.

Mr. King: Off the record, your Honor.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Mr. MacIntyre: If your Honor please, I now offer into evidence Commission's Exhibits for identification 74-Z-24, 74-Z-25, 74-Z-26, 74-Z-27, 74-Z-28, 74-Z-29, 74-Z-30, 74-Z-31, 74-Z-32, 74-Z-33, as the freight rate bulletins and freight rate schedules of the Clayton Mark & Company, and I ask Mr. King as attorney for that company if he will concede that these are photostats of such booklets of that company?

Mr. King: As I understand it, if your Honor please, they are only some of the freight rate bulletins I furnished to Mr. MacIntyre. Do I understand that you propose at a later date to offer them all, or are the ones you mentioned all that you expect to offer?

Mr. MacIntyre: These are all that I expect to offer at this time and in this form. I do propose, however,

439 as to some other booklets which you have given me of the Clayton Mark Company, to offer some additional facts if I do not offer the booklets themselves.

Mr. King: Well, I am willing to admit that they are copies of some of the freight rate bulletins that I furnished Mr. MacIntyre at his request.

Mr. MacIntyre: That is, of the Clayton Mark Company?

Mr. King: Of the Clayton Mark Company.

Mr. MacIntyre: I offer those in evidence now, your Honor.

Trial Examiner Norwood: Any objections?

Mr. King: I object to them on the ground that the whole group should be offered.

Trial Examiner Norwood: Any further objection? Overruled. Received as marked. Wait a minute, now; that is 74-Z-24, 74-Z-25 to Z-33.

COMMISSION'S EXHIBITS NOS. 74-Z-24 to 74-Z-33 inclusive, were offered and received in evidence.

Mr. MacIntyre: If your Honor please, I now offer into evidence Commission's Exhibits for identification 79-Z-92, 79-Z-103, 79-Z-113, 79-Z-123, and 79-Z-126. All of these documents bear on the outside of the back page a certification by the—by Robert C. Walker, attorney for re-
440 spondent Walker Brothers, to the effect that these documents are authentic and genuine of what they purport to be on their face, and I offer them as the freight rate schedules and freight rate bulletins of the Walker Brothers Company.

Trial Examiner Norwood: Any objection? Received as marked.

COMMISSION'S EXHIBITS NOS. 79-Z-92, 79-Z-103, 79-Z-113, 79-Z-123, and 79-Z-126 were offered and received in evidence.

(A document was marked "Commission's Exhibit 80-Z-55," for identification.)

Mr. MacIntyre: If your Honor please, I now offer into the record Commission's Exhibit for identification 80-Q,—

Trial Examiner Norwood: What is that?

Mr. MacIntyre: 80, one of the reserved numbers.

Trial Examiner Norwood: 80?

Mr. MacIntyre: 80-Q.

Trial Examiner Norwood: All right.

Mr. MacIntyre: —80-Z-52, 80-Z-54 and 80-Z-55, as the delivery charge booklets and freight rate schedule booklets of the National Electrical Products Corporation, and I ask Mr. Houston to concede that they are genuine and

authentic booklets of that nature of the National Company which he has furnished to me.

441 Mr. Houston: If your Honor please, these were among the group of documents which were identified by me several days ago as having been produced for Mr. MacIntyre pursuant to his request of, I believe, July 18. These are four of that group of documents which were so produced. They are not a complete set of the documents furnished to him.

Mr. MacIntyre: In other words, there were other books included in that set.

Mr. Houston: There were other documents included in that set.

Trial Examiner Norwood: Yes.

Mr. King: I object to them on the ground they should all be offered.

Trial Examiner Norwood: Any objection? Any further objections?

Objection overruled. They are received as marked.

COMMISSION'S EXHIBITS NOS. 80-Q, 80-Z-52, 80-Z-54 and 80-Z-55 were offered and received in evidence.

442 Mr. MacIntyre: I believe that there is a pending offer.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

443 Mr. MacIntyre: Exhibits for identification 365 to 408-A and B, inclusive.

Trial Examiner Norwood: Are the counsel ready to state their objections to that proffer?

Mr. MacIntyre: On that, if your Honor please, I would like to state that I withdraw the offer on 407 because I find that it is a duplicate of one of the other documents in that offer.

Trial Examiner Norwood: I will hear from counsel.

Mr. Stewart: Mr. Examiner, the offer was made so long ago and so much water has passed over the dam that I have forgotten what the offer was for, but, as I understand it, the theory of the offer is that with the additional documents that the exhibits 365 to 372 which are freight rate schedules and supplements thereto are now admissible against all the respondents for the reason that the accompanying documents show that the respondents ordered the freight rate schedules and their supplements from Mr. Donley during the period shown by the documents, and

if I am correct in that the documents do not show that all the respondents ordered the freight rate schedules and supplements because they specifically exclude Enamelled Metals and Steelduct, but I understand from Mr. MacIntyre that the documents he now has in his possession show that, in fact, Enamelled Metals and Steelduct did order the documents from Mr. Donley. Am
444 I correct in that?

Mr. MacIntyre: We are prepared to show that at a later date.

Mr. Stewart: Well, you see, that is just why I have to object to the offer, and I don't want to because I know he can show it, and what is the use of having the offer stand that way?

Trial Examiner Norwood: Wouldn't they be—

Mr. Stewart: He is offering it against all the respondents. If he is offering it against these respondents to show that they ordered it, all well and good, but if he is offering it on the ground that Enamelled Metals and Steelduct ordered it, then I object to it.

Trial Examiner Norwood: Wouldn't it be admissible as evidence against the respondents anyway? Wouldn't it be evidence in that case?

Mr. Stewart: Well, you see, I am not objecting to the respondents as to whom the documents show responsibility, but if the offer is—and as I understand it, it is—against all the respondents, including Enamelled Metals and Steelduct, I want to object on the ground that the offer is not proof of the order.

Mr. MacIntyre: These are offered to carry the story as far as they can. This offer will be supplemented in-
sofar as Steelduct and Enamelled Metals are con-
445 cerned. We don't propose to say at this time that this offer carries the complete story. By the nature of things it can't be complete in itself, but we contend that it does carry enough of the story of collective activity on the part of these respondents in developing a common pricing factor, if you please, as to make them material and relevant, and they are otherwise competent for receipt in the evidence here.

Mr. Gilpatric: I want my objection made to the prior offer of Exhibits 365 to 369 to stand on behalf of Youngstown Sheet & Tube Company.

Trial Examiner Norwood: As I understand it, there

is no question about its applying to one or some of the respondents and the Commission offers—undertakes to connect it with any others, and it is also our understanding that unless it is connected with the others it is not to be considered against them. So I think the matter is clear that they should be received in evidence and the application made at a later time.

Mr. Stewart: Just to keep you sort of up to date as to what they do show, they show that after 1937 when apparently, to some extent at least, the Association published the freight rate bulletin, that thereafter each individual respondent made his own arrangement with Donley to prepare the documents for him and paid him for them as an individual transaction.

446 Trial Examiner Norwood: Objections are overruled and the exhibits are received as marked, Commission's Exhibits for identification 365 to 406 and Commission's Exhibit for identification 408-A and B, 407 being withdrawn.

COMMISSION'S EXHIBITS NOS. 365 to 406 inclusive, and 408-A and B, were offered and received in evidence.

Mr. King: Just a minute, your Honor. I understand that only included 365 to 369.

Mr. Stewart: Oh, no. All of them.

Trial Examiner Norwood: All of them.

Mr. Stewart: All of these, so that you know. (Handing documents to Mr. King.)

Mr. King: Well, I got a reference to them, Mr. Stewart.

Mr. Stewart: I thought maybe you wanted to look at them. I am not objecting to the other documents.

Mr. King: Did your Honor rule on the offer yet?

Trial Examiner Norwood: Yes; they have been received. The counsel may have his objection set forth, stated, considered as to the whole of these exhibits.

Mr. King: Thank you, sir.

Mr. Stewart: Shouldn't you get them on the record if you have any further objections, sir?

Mr. King: Well, I understood all my objections
447 to date apply to the present offer of Mr. MacIntyre. Is that your understanding, sir?

Trial Examiner Norwood: I think so; yes. Proceed.

Mr. MacIntyre: I would like to ask at this time if Mr. Welch, as attorney for Robert S. Booth, will accept service for him of a subpoena for his appearance in New

York Thursday morning at 10 o'clock daylight saving time.

Mr. Welch: I will try to get him in Pittsburgh. I don't think I can accept service. I can get him on the telephone and see if he will be there.

Mr. MacIntyre: I am merely requesting him if he will accept service for Mr. Booth and undertake to have him present at the hearing in New York on Thursday morning.

Mr. Stewart: I didn't know he could do that. It is news to me. I think it is up to the Examiner.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Mr. Welch: Was that on the record?

Mr. Stewart: Yes.

Trial Examiner Norwood: Yes.

Mr. Welch: If that is made for the record, I can't accept service on behalf of Mr. Booth, but I will tell you right now that I will make every endeavor to communicate with him by telephone and try and get him here.

448 Trial Examiner Norwood: And have him to accept service?

Mr. Welch: Have him to accept service.

Mr. MacIntyre: You mean to have him present in New York, not here. He will be in New York, it is, on Friday morning, September 26th?

Mr. Stewart: It is not Thursday? It is Friday?

Mr. MacIntyre. No. I made a mistake there. It is the 26th of September, Friday morning, 10 o'clock daylight saving time, Parlor C, 22nd floor of the Hotel Abbey.

Mr. Welch: I will report to your Honor in the morning and try to make contact in Pittsburgh.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Mr. MacIntyre: If your Honor please, I now offer into the record the price cards of the Cohoes Rolling Mill Company and its affiliated company, the Mohawk Tube Company, which is a part of the Cohoes Rolling Mill Company, as Commission's Exhibits for identification 53-A to 53-Z-63, inclusive, and will ask if there is any objection on the part of counsel for respondent as to their identification as the price cards of that company.

Mr. Robison: I think you said they are authenticated by Mr. Poskanzer, did you not?

Mr. MacIntyre: He turned them into me as the price
449 cards of that company without any additional certification.

Trial Examiner Norwood: Do you offer those?

Mr. MacIntyre: Yes, I have offered those for the record.

Trial Examiner Norwood: Is there any objection?

COMMISSION'S EXHIBITS NOS. 53-A to 53-Z-63 were offered and received in evidence.

Mr. MacIntyre: I now offer in evidence the price cards of the General Electric Company as they were turned in to me by Mr. Gerard Swope, Jr., Commission's Exhibit for identification 54-A to 54-Z-65, inclusive, and I will ask respondents if they have any objection as to the identification of those.

Trial Examiner Norwood: Is there any objection?

They are received as marked.

COMMISSION'S EXHIBITS NOS. 54-A to 54-Z-65 were offered and received in evidence.

Mr. MacIntyre: I now offer into the record price cards of the Youngstown Sheet & Tube Company, Commission's Exhibit 55-A to 55-Z-64, inclusive, the authenticity and genuineness of which has been certified to by counsel for that company.

450 Trial Examiner Norwood: Is there any objection?

They are received as marked.

COMMISSION'S EXHIBITS NOS. 55-A to 55-Z-64 were offered and received in evidence.

Mr. MacIntyre: I now offer into evidence the price cards of the Clayton Mark & Company, Commission's Exhibit for identification 56-A to 56-Z-21, inclusive, and will ask if there is any objection on the part of counsel for the respondents as to the identification of those documents as such.

Trial Examiner Norwood: Is there any objection?

They are received as marked.

COMMISSION'S EXHIBITS NOS. 56-A to 56-Z-21 were offered and received in evidence.

Mr. MacIntyre: I now offer into evidence the price cards of the Triangle Conduit & Cable Company, Inc., Commission's Exhibit 57-A to 57-Z-31, inclusive.

Trial Examiner Norwood: Is there any objection?

They are received as marked.

COMMISSION'S EXHIBITS NOS. 57-A to 57-Z-31 were offered and received in evidence.

Mr. MacIntyre: I now offer into evidence the price cards of the M. B. Austin Company, Commission's Exhibit 451 for identification 58-A to 58-Z-13, inclusive.

Trial Examiner Norwood: Is there any objection? They are received as marked.

COMMISSION'S EXHIBITS NOS. 58-A to 58-Z-13 were offered and received in evidence.

Mr. MacIntyre: I now offer into evidence price cards of the Laclede Tube Company and Laclede Steel Company, Commission's Exhibit for identification 59-A to 59-Z-18, inclusive.

Trial Examiner Norwood: Is there any objection? They are received as marked.

COMMISSION'S EXHIBITS NOS. 59-A to 59-Z-18 were offered and received in evidence.

Mr. MacIntyre: I now offer into evidence the price cards of Spang-Chalfant, Inc., Commission's Exhibit 60-A to 60-R, inclusive.

Trial Examiner Norwood: Is there any objection? They are received as marked.

COMMISSION'S EXHIBITS NOS. 60-A to 60-R were offered and received in evidence.

Mr. King: When your Honor says "is there any objection," I assume you mean in addition to the stand-
452 ing objection?

Trial Examiner Norwood: Yes, that is right.

Mr. MacIntyre: What standing objection is there, if I may ask, as to the price cards of these respondents?

Trial Examiner Norwood: As to connection.

Mr. King: Correct, sir, and materiality.

Mr. MacIntyre: They are the only objections that are considered to be standing objections to these.

Mr. King: There are a lot of standing objections, Mr. MacIntyre.

Trial Examiner Norwood: As I understand it, there is no objection to this identification.

Mr. King: Correct, sir.

Trial Examiner Norwood: That is all that is necessary at this time.

Proceed.

Mr. MacIntyre: I now offer into evidence price cards of the respondent, Walker Brothers, Commission's Exhibit 61-A to 61-Z-86.

Trial Examiner Norwood: Is there any objection?

They are received as marked.

COMMISSION'S EXHIBITS NOS. 61-A to 61-Z-86 were offered and received in evidence.

Mr. Welch: I would like to state for the record
453 that I have been in touch with the Office of the Organization Service Corporation by telephone, and they told me that Mr. Booth is in Washington today, and is over at the OPM. I can not locate him over there. They say he is going to take a plane to Pittsburgh at 4:45, so I do not know whether I can make contact with him or not, but I can send him a telegram to his office in Pittsburgh, and that will try to contact him from the New York office of the Organization Service.

Trial Examiner Norwood: You can have him paged at the airport.

Mr. Welch: Sir?

Mr. Stewart: I was going to say, that is the best place.

Trial Examiner Norwood: Proceed.

Mr. MacIntyre: I have some papers here which I would like to have marked for identification.

Trial Examiner Norwood: All right. Let them be marked for identificatioin.

(The documents were thereupon marked "Commission's Exhibits 63-A to 63-Z-37, 68-A to 68-Z-41, 69-A to 69-R, and 70-A to 70-I," for identification.)

Trial Examiner Norwood: We will take a short recess.

(A short recess was taken.)

Trial Examiner Norwood: Gentlemen, let us come
454 to order.

You may proceed.

Mr. MacIntyre: If your Honor please, I now offer into evidence the price cards of the respondent, National Electric Products Corporation, Commission's Exhibit for identification 62-A to 62-Z-88.

Trial Examiner Norwood: Is there any objection?

They are received as marked.

COMMISSION'S EXHIBITS NOS. 62-A to 62-Z-88 were offered and received in evidence.

Mr. MacIntyre: I now offer price cards of the Enamelled Metals Company, Commission's Exhibit for identification 63-A to 63-Z-37.

Trial Examiner Norwood: Is there any objection?

Mr. Stewart: None.

Trial Examiner Norwood: They are received as marked.

COMMISSION'S EXHIBITS NOS. 63-A to 63-Z-37 were offered and received in evidence.

Mr. MacIntyre: I now offer into evidence price cards of the Steelduct Company, Commission's Exhibit for identification 64-A to 64-Y, inclusive.

Trial Examiner Norwood: Is there any objection?

455 Received as marked.

COMMISSION'S EXHIBITS NOS. 64-A to 64-Y were offered and received in evidence.

Mr. MacIntyre: I now offer into evidence price cards of Steel and Tubes, Inc., Commission's Exhibit 65-A to 65-T, inclusive.

Trial Examiner Norwood: Is there any objection?

They are received as marked.

COMMISSION'S EXHIBITS NOS. 65-A to 65-T were offered and received in evidence.

Mr. MacIntyre: I now offer into evidence price cards of Steel and Tubes, division of respondent Republic Steel Corporation, Commission's Exhibit for identification 66-A to 66-D, inclusive.

Trial Examiner Norwood: Is there any objection?

They are received as marked.

COMMISSION'S EXHIBITS NOS. 66-A to 66-D were offered and received in evidence.

Mr. MacIntyre: I now offer into evidence the price cards of respondent Garland Manufacturing Company, Commission's Exhibit for identification 68-A to 68-Z-41, inclusive.

456 Trial Examiner Norwood: Is there any objection?

They are received as marked.

COMMISSION'S EXHIBITS NOS. 68-A to 68-Z-41 were offered and received in evidence.

Mr. MacIntyre: I now offer into evidence price cards of respondent Central Tube Company, Commission's Exhibit for identification 69-A to 69-R, inclusive.

Trial Examiner Norwood: Is there any objection?

They are received as marked.

COMMISSION'S EXHIBITS NOS. 69-A to 69-R were offered and received in evidence.

Mr. MacIntyre: I now offer into evidence price cards of respondent Clinton Conduit Company, Commission's Exhibit for identification 70-A to 70-L, inclusive.

Trial Examiner Norwood: Is there any objection?

They are received as marked.

COMMISSION'S EXHIBITS NOS. 70-A to 70-L were offered and received in evidence.

Mr. MacIntyre: Now, if your Honor please, in offering these price cards, Commission's Exhibit 53 to 66, inclusive, and 68 to 70, inclusive, I do not contend that we have in each instance all price sheets, price quota-
457 tion sheets which have been issued by these companies.

I have, however, offered all that counsel for the various respondents have submitted to us in response to our request for all price cards of their clients.

Mr. Stewart: Well, now, I should like to ask if that statement is made for the purpose of suggesting that anyone is suppressing price cards?

Mr. MacIntyre: No, it was not made for that purpose, Mr. Stewart.

Trial Examiner Norwood: I did not so take it.

Mr. Stewart: I beg your pardon.

Trial Examiner Norwood: I did not so take it. There was objection made here about not introducing all of certain data.

Mr. Stewart: That is not the point of the remark, as I understand it.

As I understand counsel, he says he does not contend he has all price cards. I want to know which ones are missing because if there are any missing we will get them. I do not want the record to show that we have not furnished him with all price cards.

I now ask counsel to state what copies are missing and from what companies.

Mr. MacIntyre: Will the reporter please read my statement?

458 Trial Examiner Norwood: Read Mr. MacIntyre's statement.

(Statement by Mr. MacIntyre read.)

Trial Examiner Norwood: Now, can counsel answer the question there? Do you wish him to answer your question?

Mr. Stewart: Well, maybe Mr. MacIntyre did not mean it the way I interpreted it, but certainly the way he stated it, it creates the impression that somebody has not given him everything that should have been given to him. If that is not what he means, let him so state.

Mr. MacIntyre: I did not mean to imply anything other

than what is clear in the statement I made. Of course, upon having it reread I believe that it is absolutely clear as to its meaning, that is that we requested all cards, and I have offered here all that were given us in response to that request.

Trial Examiner Norwood: Proceed.

Mr. MacIntyre: I do not think that of itself implies anything other than just what it says.

Trial Examiner Norwood: Go ahead.

Mr. MacIntyre: If your Honor please, I want to inform you at this time that we have a considerable number of separate documents probably running to some two or three hundred. They are not to be offered at any of the hearings here in Washington, but we are prepared
459 now to have them marked for identification, and I would like to ask that the reporter undertake the marking of those beginning this evening, so that he can inform you tomorrow morning of the numbers he has attached to certain documents for identification, so that when we are ready to handle them on the record that it will not take the time of the hearing in having them marked any more than it will do so by taking the time between now and the end of the day.

Except for that, I do not know that we have anything that I care to bring before the hearing today, that is anything further.

Trial Examiner Norwood: Can the reporters mark these between now and 10 o'clock tomorrow morning, do you think?

Mr. MacIntyre: I believe so. They will run some three or four hundred pieces of correspondence.

Trial Examiner Norwood: Is it agreeable to all counsel to take a recess until 10 o'clock tomorrow morning?

Mr. Welch: May we go off the record, if your Honor please?

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: On the record.

We will recess until 10 o'clock tomorrow morning.

(Whereupon, at 3:40 p. m. a recess was taken to Wednesday, September 24, 1941, at 10 a. m.)

462 PROCEEDINGS.

Trial Examiner Norwood: Pursuant to adjournment on yesterday, the hearing in Docket 4452 is now reconvened at 10 o'clock a. m., September 24, 1941, in Room 332, office of the Federal Trade Commission, Washington, D. C.

Please note the appearances.

Proceed, Mr. MacIntyre.

Mr. MacIntyre: If your Honor please, I handed some documents to the reporter and he has marked them as Commission's Exhibits for identification 409 to 636, inclusive, and he can give you any of those sub-letters that have been attached to any of those particular documents.

I would like for the record to show the numbers that he has attached.

Trial Examiner Norwood: Yes.

Proceed.

(The documents were thereupon marked "Commission's Exhibits 409, 410, 411-A and B, 412, 413, 414-A to D, 415-A to D, 416 to 478, inclusive, 479-A to C, inclusive, 480, 481, 482, 483, 484, 485, 486-A and B, 487-A to P, inclusive, 488-A to D, inclusive, 489-A to H, inclusive, 490-A to N, inclusive, 491-A to M, inclusive, 492 to 518, inclusive, 519-A to D, inclusive, 520-A to C, inclusive, 521-A to C, inclusive, 522 to 530, inclusive, 531-A and B, 532, 533-A
463 and B, 534, 535, 536, 537, 538-A and B, 539 to 551, inclusive, 552-A and B, 553-A and B, 554 to 564, inclusive, 565-A, B and C, 566, 567, 568-A and B, 569 to 573, inclusive, 574-A and B, 575, 576-A to E, inclusive, 577-A and B, 578-A and B, 579, 580-A and B, 581-A and B, 582-A and B, 583-A and B, 584, 585-A and B, 586, 587-A and B, 588, 589, 590-A to D, inclusive, 591-A to D, inclusive, 592-A and B, 593-A and B, 594, 595, 596-A and B, 597-A and B, 598, 599-A and B, 600-A and B, 601 to 606, inclusive, 607-A to D, 608, 609, 610, 611-A to E, 612, 613-A to D, 614, 615-A, B and C, 616, 617, 618-A and B, 619, 620, 621, 622-A and B, 623, A and B, 624 to 631, inclusive, 632-A and B, 633-A and B, 634, 635 and 636," for identification.)

Mr. MacIntyre: I would like to ask that the reporter attach at this time numbers for identification as Commission's exhibits to the following documents which I am handing him.

(The documents were thereupon marked "Commission's

Exhibits 637, 638, 639, 640, 641, 642-A and B, 643 to 659, inclusive, 660-A to E, 661-A to F, 662, 663, 664, 665-A to H, 666, 667, 668, 669, 670, 671-A and B, 672-A to D, 673-A to D, 674-A to D, 675-A and B, 676-A and B, 677-A and B, 678-A and B, 679-A and B, 680-A and B, 681-A and B, 682-A and B, 683-A and B, 684-A and B, 685-A and B, 686-A to D, inclusive, 687-A to D, inclusive, 688-A to D, inclusive," for identification.)

465 S. L. WILLIAMS, was recalled to the stand on behalf of the Commission and testified as follows:

Direct Examination by Mr. MacIntyre.

Q. Mr. Williams, I show you documents marked for identification as Commission's Exhibits 637, 645—that is, 637 to 641, inclusive, 642-A and B, 643, 644 and 645. I ask you to state if you recognize them, and if so as what.

Trial Examiner Norwood: 637 to 645; is it? 637 to 645?

Mr. MacIntyre: Except that 642 is of two pages, A and B.

Trial Examiner Norwood: Yes.

A. Yes; these are letters—copies of letters which
466 I withdrew from the files of the Rigid Steel Conduit Association.

Mr. Stewart: Well, to save time, are those the ones I initialed? What is the discussion about?

By Mr. MacIntyre:

Q. I now show you Commission's Exhibits for identification 646 and 647. What can you say as to those?

A. Those—they are also pamphlets which I withdrew from the—

Mr. Austin: I am sorry; we can't hear.

Trial Examiner Norwood: They have been agreed to by counsel. There is no use of your identifying them by this witness.

Mr. MacIntyre: Well, they haven't been.

Trial Examiner Norwood: All right.

Mr. MacIntyre: They haven't been certified as yet.

Mr. Stewart: Well, if you will let me look at them I can probably save you a lot of time.

Mr. MacIntyre: I will show Mr. Stewart the documents marked for identification as Commission's Exhibits 648 to 661-F, inclusive, and ask him to state if he will concede on the record that they are genuine and authentic documents of what they purport to be on their face and which was furnished to him—furnished to Mr. S. L. Williams,
467 a representative of the Federal Trade Commission, by Mr. Stewart as documents coming from the files of the Rigid Steel Conduit Association.

Mr. Stewart: Well, relying on Mr. Williams' statement that these are documents which he obtained from the files of the Rigid Steel Conduit Association which were under my control in Pittsburgh, I am willing to concede that these are documents obtained from that file. As to their authenticity I know nothing. I have no way of knowing whether they are authentic. All I know is that they were papers—

Trial Examiner Norwood: In those files?

Mr. Stewart: In those files.

The Witness: That is all I know about it too.

Mr. MacIntyre: But you did testify as to that fact yourself?

Mr. Stewart: I admit it.

The Witness: Yes.

Mr. Stewart: Yes.

Mr. MacIntyre: That the papers and documents are from the files of the Rigid Steel Conduit Association?

(Commission's Exhibits 686-A and B, and 690-A and B were marked for identification.)

Mr. MacIntyre: Off the record.

468 Mr. MacIntyre: If your Honor please, I now make reference to Commission's Exhibits 2-Z-3 to 2-Z-6 for identification, 2-Z-122 to and including 2-Z-127, 2-Z-129 to and including 2-Z-135, 2-Z-160 to and including 2-Z-163, 2-Z-169 to and including 2-Z-171, 2-Z-175 to and including 2-Z-176, 2-Z-177, 2-Z-284 to and including 2-Z-286, 2-Z-292 to and including 2-Z-297.

Trial Examiner Norwood: 292 to 297; is that right?

Mr. MacIntyre: That is right. 2-Z-300.

Mr. King: Would you mind again stating for the record what they are?

Mr. MacIntyre: I am coming right to that. As minutes of meetings and lists of minutes of meetings of the Rigid Steel Conduit Section of the National Electrical Manufac-

turers Association, and I will ask Mr. Stewart if he will concede that he has taken these papers from the files of the Rigid Steel Conduit Association.

Mr. Stewart: I can't enlighten you any further than I have already enlightened you on that point. I can't concede anything other than in the five steel files and which were in the office of the Rigid Steel Conduit Association on 42nd Street in New York and which were sent to me within the last few months these documents were there. That is all I know about them.

469 Mr. MacIntyre: That is all I ask in the way of a concession at this time.

Mr. Welch: During what period were they, Mr. MacIntyre?

Mr. Stewart: 1931, I believe.

Mr. MacIntyre: I now make reference to Commission's Exhibits for identification 689-A and B and 690-A and B and will ask if Mr. Stewart will concede on the record that those pages contain true and correct excerpts of—that is, copies of true and correct excerpts from the minutes of the Rigid Steel Conduit Association, the said copies of excerpts having been made at Mr. Stewart's direction and submitted to a representative of the Federal Trade Commission.

Mr. Stewart: No; that is not correct at all.

Mr. MacIntyre: Well, will you state what the facts are, then?

Mr. Stewart: I will state what happened. I gave the minutes which are before us to Mr. Williams. Mr. Williams indicated the portions he wanted copied; I had them copied by my force, and whether they are correct or not I don't know, but if Mr. Williams says he compared them and they are correct, I will accept his statement. I didn't compare them.

Mr. MacIntyre: These are copies of typed excerpts which you had made up.

Mr. Stewart: Whatever Mr. Williams says they are,
470 I will admit, because I don't know; I didn't compare them.

Trial Examiner Norwood: Did you compare them, Mr. Williams?

The Witness: I didn't have the originals when I received the copies, sir. I didn't compare them, but I did read them, and I think they are identical with them, and,

if I remember correctly, those are complete—those two to which he has reference are complete copies of this rather than excerpts.

By Mr. MacIntyre:

Q. All right, Mr. Williams, I will put a further question to you. I am showing you Commission's Exhibits for identification 689-A and B and 690-A and B and I will ask you to state what you know about them. Give us all the details that you know about those particular papers.

Mr. Stewart: Well, what I object to, I don't see why we should take time. What I have stated is correct, and I am sure Mr. Williams will corroborate me in that. There is no mystery about them. I didn't have time to check them.

Trial Examiner Norwood: Let him answer. Objection overruled.

A. Well, I read these minutes of September 10, 1936, and October 15, 1936.

Q. Where did you get them?

A. In Mr. Stewart's office and requested copies of
471 them, and these appear to be copies which I had read —copies of those minutes which I had read.

Q. Now, when you refer to "these" you are referring to those exhibit numbers that I just asked you about?

A. 689-A and 689-B and 690-A and 690-B.

Q. Where did you get these particular papers that were marked 689 and 690?

A. They were forwarded to me by Mr. Stewart's office.

Q. As copies of the minutes which you had read in his office?

Mr. Stewart: Not at all. I object to that.

Trial Examiner Norwood: Objection sustained.

Mr. Stewart: As a matter of accommodation to Mr. Williams—

Trial Examiner Norwood: That is all in the record, Mr. MacIntyre.

Mr. Stewart: Yes. The originals are here, if there is any question about it.

Trial Examiner Norwood: Yes; they are copies. Proceed.

By Mr. MacIntyre:

Q. Mr. Williams, I now show you Commission's Exhibit for identification 662-A and B and I ask you to

state what that is, if you know, and tell us what you know about it.

A. It is a consigned stock agreement form used by
472 the Garland Manufacturing Company which I obtained from Mr. Robert M. Garland on June 14, 1940.

Q. Did you receive any information from Mr. Garland at that time about when he adopted and used this particular form?

A. Well, he told me that this was a form which had been suggested by Mr. Herbert S. Blake, and he adopted it beginning either the latter part of 1936 or the first of 1937.

(The document heretofore marked "Commission's Exhibit 663" was re-marked "Commission's Exhibit 663-A and B.")

Q. I now show you Commission's Exhibit for identification 663-A and ask you to state whether you know anything about that, that is, what it is, and if so tell us and tell us anything you know about the document.

A. This is a consigned stock agreement form which was used by the Fretz-Moon Tube Company and also by Steel and Tubes. We obtained it from J. M. Barton on June 20, 1940.

Q. Did you ascertain at that time when that was adopted and used by those companies?

A. Well, Mr. Barton told me when I asked him how long it had been in use, he had used it either since the latter part of '36 or the first of '37 and that it was a form of contract which had been suggested by Mr. Herbert S. Blake.

(Discussion off the record.)

Q. Mr. Williams, I now show you Commission's
473 Exhibit for identification 665-A to H, inclusive, and ask you to tell us what that is, if you know, and anything else that you know about it.

A. It is a form of consignment contract used by the Clifton Conduit Company which I obtained from Mr. G. L. Hatheway on June 24, 1940.

Q. Mr. Williams, I now show you Commission's Exhibit for identification 673-A to D, inclusive, and I ask you to state, if you can, what they are and tell us any other thing that you know about it.

Trial Examiner Norwood: Is that A-B or A-D?

Mr. MacIntyre: A-D.

A. It is a form of consignment agreement used by

Spang Chalfant Corporation which was furnished by Mr. —me by Mr. A. H. Dufort on June 11, 1940. I believe at the time Mr. Dufort furnished this he said that the company had just gone in business and this was a contract which it had used.

Q. Mr. Williams, I now show you Commission's Exhibits for identification 676-A and B, 677-A and B, and I ask you to state what they are, if you know, and tell us anything else you know about those?

A. This is a form of a purchase contract used in the sale of Rigid Steel Conduit on a specific building job by the Clifton Conduit Company which I obtained from Mr. G. L. Hatheway on June 24, 1940.

474 Q. Did you learn anything else about them at that time?

A. Well, I asked Mr. Hatheway about these contracts, how long they had been in existence, and he said he didn't know, that his company bought its conduit from General Electric Company and tried generally to follow its procedure, and he thought they were copies of—or almost identical copies of contracts used by General Electric Company.

Q. Did he tell you anything about the time that he started using these?

A. No, he didn't.

Q. I now show you Commission's Exhibits for identification 678-A and B and 679-A and B. Tell us what those are, if you know, and anything else about them.

A. These are two types of contracts used by the Garland Manufacturing Company in the sale of conduit for a specific building job. I obtained these from Mr. Robert M. Garland on June 14, 1940, and at the time I obtained them I asked him how long they had been in use, and he said they had first started using them in the latter part of 1936 or the first of 1937 and that they were forms which had been suggested by Mr. Blake for use with this particular method of sale.

Trial Examiner Norwood: Wait a minute. What numbers were those? I didn't get them.

Mr. MacIntyre: 678-A and B and 679-A and B.

By Mr. MacIntyre:

475 Q. Mr. Williams, I now show you Commission's Exhibits for identification 680-A and B and 681-A

and B and ask you to tell us what they are, if you know, and anything else that you know about them.

A. Yes. These are sales contracts which are used by the Enamelled Metals Company in the sale of Rigid Conduit for a specific building job. I obtained these from Mr. Lawrence R. Quinn on June 13, 1940; and at the time he furnished them to me he told me that they had been in use since about the first of 1937 and that they were forms suggested by Mr. Blake for use in this particular type of sale. I asked him if he had—if he worked out the details of the contract between his—between his company and its customers, and he said he understood these details were worked out between Mr. I. A. Bennett and Herbert S. Blake; that his company had merely adopted them for use.

Q. Mr. Williams, I now show you Commission's Exhibits for identification 684-A and B and 685-A and B. I ask you to tell us what you know about those, that is, tell us what they are, if you know, and anything else you know about them.

A. These are contract forms—

Trial Examiner Norwood: Off the record just a minute.

(Discussion off the record.)

A. These are contract forms used by Fretz-Moon 476 Tube Company and Steel and Tubes in the sale of rigid conduit for a specific building job. I obtained them from Mr. J. M. Barton on June 20, 1940, and at the time I obtained them I asked him how long they had been in use, and he told me since about the first of 1937 or the latter part of '36. I also asked him who prepared them. He said his own—they were prepared by his company but he—but the provisions in them were those suggested by Mr. Herbert S. Blake; he understood the details had been worked out between—by Mr. Blake and Mr. Bennett.

Q. Who did he tell you that Mr. Bennett was that he was referring to?

A. The Mr. Bennett he referred to was an officer of the National Electric Products Corporation.

Mr. MacIntyre: If your Honor please, I now offer into evidence Commission's Exhibits 662-A and B, 663-A and B, 665-A to H. inclusive, 673-A to D, inclusive, 676-A and B, 677-A and B, 678-A and B, 679-A and B, 680-A and B, 681-A and B, 684-A and B, and 685-A and B.

Trial Examiner Norwood: Is there any objection?

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Mr. King: I would like to ask the witness a question or two to determine if I do have any objection at the proper time.

Trial Examiner Norwood: Counsel may proceed.

Voir Dire Examination.

By Mr. King:

477 Q. Were these all the documents, Mr. Williams, that you obtained from the companies you have indicated?

A. No.

Q. Did you make any memorandum concerning your conference with the gentlemen you have indicated?

A. I did.

Q. Where is that memorandum?

A. I assume that it is in the possession of Mr. MacIntyre.

Q. And it is from that memorandum that you are testifying?

Mr. MacIntyre: I object. It is clear that the witness has not been testifying from any memorandum.

Trial Examiner Norwood: Now, wait a minute. Let him answer that himself.

A. Well, I made some notes either at the time I was talking to these persons whom I had named or immediately thereafter, and it was from those notes that I prepared whatever memorandums were prepared in regard to any conversation I might have had with them.

By Mr. King:

Q. You used those notes to refresh your recollection, did you?

Mr. MacIntyre: Now, I object to that question unless it is limited as to when.

Mr. King: Any time.

Trial Examiner Norwood: The objection is overruled.

478 Answer the question.

A. Yes, I did.

By Trial Examiner Norwood:

Q. When was that, how recently?

A. I haven't referred to those notes since I prepared the memorandum.

Q. How long ago was that?
A. That was in July, 1940.

By Mr. King:

Q. Have you referred to the memorandum since then?
A. I have.
Q. How recently?
A. This morning.

Mr. King: I would like to see the memorandum, sir. I think we are entitled to see it.

Mr. MacIntyre: If your Honor please, I would like to ask the witness a question on that.

Trial Examiner Norwood: All right.

By Mr. MacIntyre:

Q. Have you referred to any memorandums during the course of your testimony on the stand here of any kind?
A. No.

Mr. MacIntyre: What is the witness' answer?

(Answer read as follows: "No.")

Mr. King: He said he did so this morning before
479 he took the stand.

Trial Examiner Norwood: Yes.

Now, what is your request?

Mr. King: I think we are entitled to see the memorandums from which this witness' recollection obviously is being refreshed.

Trial Examiner Norwood: My ruling is you are not entitled to see anything he did not consult during the course of his testimony. If he brings it on the stand you have a right to see it.

By Mr. Stewart:

Q. Mr. Williams, did you compare these various forms?
A. Yes, I did.

480 COMMISSION'S EXHIBITS NOS. 662-A and B, 663-A and B, 665-A to H, inclusive, 673-A to D, inclusive, 676-A and B, 677-A and B, 678-A and B, 679-A and B, 680-A and B, 681-A and B, 684-A and B and 685-A and B, were offered and received in evidence.

Mr. MacIntyre: I tender the witness for cross-examination.

Mr. Stewart: There is no cross-examination as far as we are concerned.

I would like to, yes—excuse me—I would like to clear this furor about how Mr. Williams obtained the copies of the documents.

Cross-Examination by Mr. Stewart.

Q. Mr. Williams, is it not correct that I gave you
481 the documents, whatever they are, containing the—what seem to be minutes, and at your request I utilized by stenographic force to make these copies for you?

A. That is correct.

Q. Is that right?

A. That is correct.

Q. All you know about the so called minutes or the documents which are here in evidence as exhibits—

Mr. Robison: They are not in evidence.

By Mr. Stewart:

Q. Well, whatever you saw, Commission's Exhibit 2-A to Z-327, you do not know anything more about it than that you saw those documents?

A. That is right.

Q. Whatever they are?

A. That is right.

Q. And you left my office before I made these copies for you?

A. That is right.

Q. And you did not have a chance to compare them with the documents from which the copy was made?

A. No, I did not.

Q. But you have the opportunity now since the documents are here, if you want to examine them.

A. (No response.)

482 Mr. MacIntyre: Is the cross-examination finished? I would like to ask one question.

Trial Examiner Norwood: Proceed.

Redirect Examination by Mr. MacIntyre.

Q. Irrespective of whether you had the opportunity to compare Commission's Exhibits for identification 689-A and B, 690-A and B with any documents from which they were copied in Mr. Stewart's office, you are still certain that you received them from Mr. Stewart's office after they were copied?

A. That is correct.

Q. And you did—when you did receive them, did not have the opportunity to compare them?

Trial Examiner Norwood: I would not lead my own witness that way. Ask him a question.

Mr. MacIntyre: That is all.

Trial Examiner Norwood: Proceed.

Recross Examination by Mr. Robison.

Q. Just a minute. Mr. Williams, there have been various references here during your testimony to the papers from which these copies were made as being minutes.

Do you know anything more about them than what appears on the face of them as they are here under the exhibit numbers recently referred to for identification?

483 A. I do not know anything more about those which I obtained from Mr. Stewart's office than that.

Q. Do you recall whether any of them bore any signature, I mean original signature?

A. If they did, I do not recall it.

Q. All you know about them is that they were papers which were produced from files which Mr. Stewart had in his possession at the time and which he indicated had been files of the Rigid Steel Conduit Association?

A. That is correct.

Mr MacIntyre: Now, if your Honor please, I would like to ask a further question.

Trial Examiner Norwood: Go ahead.

Redirect Examination by Mr. MacIntyre.

Q. When you visited Mr. Stewart's office and asked for access to certain files of the Rigid Steel Conduit Association, did you make any request that he furnish you with the files that contained minutes of that Association?

A. Well, I do not know that I pointed out any specific files. I just asked him if I could examine all the files that he had received from the Rigid Steel Conduit Association and he gave me a key to where they were locked and told me to go down and help myself, except for certain portions of them that I believe these minutes, or so

484 called minutes were in his office, and he handed me

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those too, and said "here is the other material which I had removed from the files."

Q. But those that purport on their face to be minutes, you secured from Mr. Stewart personally in his office?

A. Yes. He handed them to me.

Q. And told you that they had come from the files of the Association?

Mr. Stewart: Oh, let him say what I said, and don't lead him.

A. Well, he told me that he had not removed from the files which he had received from the Rigid Steel Conduit Association anything except such material as he then had on his desk, and he handed it to me. He said, "Here it is. This is what I removed."

By Mr. MacIntyre:

Q. And that included—

A. Among that, among the material removed were these minutes which I have seen this morning.

Mr. MacIntyre: That is all.

Trial Examiner Norwood: Are there any further questions?

Thank you, Mr. Williams.

486 Mr. Stewart: Well, before we pass this point, since there seems to be some slight apprehension on the part of someone on my side of the table that by the use of terms we have made some concession, I should like to have it understood, and I take it the Examiner will understand it as well as Mr. MacIntyre, for want of a better term Williams used the term "minutes", and possibly in my question I used the term "minutes." I think it was understood we were talking about documents, whatever they are, and up to the present there is no concession that they are minutes, because I happened to use that term.

Trial Examiner Norwood: Yes. All right.

Mr. Stewart: Is it so understood, Mr. MacIntyre?

Mr. MacIntyre: I understand that this morning Mr. Stewart and the other respondents' counsel have not admitted that any of these papers are anything other than documents from the files of the Rigid Steel Conduit Association.

Mr. Stewart: That is correct.

Mr. MacIntyre: May we ask that the witness be discharged?

Trial Examiner Norwood: The witness is discharged.

487 If your Honor please, I now make reference to Commission's Exhibit for identification 672-A to D, inclusive, and will ask Mr. Austin as attorney for respondent Kiefer Electrical Supply Company, Inc., whether he can make any concession as to the identity of the document.

Mr. Austin: In accordance with the request of Mr. MacIntyre, I asked the various wholesalers respondents I represent to supply copies of contracts entered into during a given period with their suppliers, and this is a copy of the contract supplied me by Keifer Electrical Supply Company, entered into between it and Spang Chalfant, Inc.

Mr. MacIntyre: I now make reference to Commission's Exhibit for identification 674-A to D, inclusive, and ask Mr. Austin if he can make any concession concerning the identification of that document.

Mr. Austin: This was supplied me in accordance with the same request by W. T. McCullough Electric Co., form of contract entered into between it and Enamelled

488 Metals Company.

Mr. MacIntyre: I now make reference to Commission's Exhibit for identification 686-A to D, inclusive, and ask Mr. Austin if he can make any concession concerning the identification of that document.

Mr. Austin: In accordance with the same request, this is a form of purchase contract for specific building job supplied me by Keifer Electrical Supply Company, entered into between it and Spang Chalfant, Inc.

Mr. MacIntyre: I now make reference to Commission's Exhibit for identification 687-A to D, inclusive, and ask Mr. Austin if he can make any concession concerning the identification of that document.

Mr. Austin: From the face of this document I am unable to state which of the wholesaler respondents I represent supplied it to me. I can state that it was supplied to me by one of them in accordance with my request, and it is not a contract entered into, it is a form of contract for specific building job of General Electric Company.

Mr. MacIntyre: And was submitted to you by one of the people that you represent as such form of the General Electric Company?

Mr. Austin: Yes.

Mr. MacIntyre: I now make reference to Commission's

Exhibit for identification 688-A to D, inclusive, and ask
489 Mr. Austin if he can make any concession concerning the identification of that document.

Mr. Austin: In accordance with the same request this contract was supplied me by E. B. Latham & Company, one of the respondents in this matter, as a contract for a specific building job, entered into between it and General Electric Company.

Mr. MacIntyre: Thank you.

If your Honor please, I now offer into evidence Commission's Exhibits 674-A to D, 686-A to D, 687-A to D, and 688-A to D.

Mr. King: Off the record.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: On the record.

Is there any objection?

Mr. King: To save time, sir, I object to that on behalf of Clayton Mark & Company on the ground that there is no connection or basis for any connection in the record between those documents and Clayton Mark & Company, and that they are therefore immaterial, incompetent and irrelevant.

Trial Examiner Norwood: Is there any objection to the proffer?

They are received as marked.

490 COMMISSION'S EXHIBITS NOS. 674-A to D, 686-A to D, 687-A to D, and 688-A to D, for identification, were offered and received in evidence.

Trial Examiner Norwood: Proceed, Mr. MacIntyre.

Mr. MacIntyre: Are all the exhibits in? Are there any other objections?

Trial Examiner Norwood: There was one objection there, but I considered that that has been amply covered, I understand, by agreements, stipulations, and statements, and is therefore out of order, so I shall not rule on it.

Mr. Bozeman: Mr. Examiner, with reference to Commission's Exhibit 687-A, that is apparently a photostatic copy of an unexecuted form of agreement of General Electric Company but apparently it is being put in through someone else, and I am not objecting to it, but I would like to have the opportunity to check and see whether or not it is the form that was in use at that time.

Trial Examiner Norwood: That may be understood.

Mr. MacIntyre: Those were received in evidence?

Trial Examiner Norwood: Yes.

Mr. MacIntyre: If your Honor please, I now make reference to Commission's Exhibit for identification 682-A and B, 683-A and B, and I ask Mr. Houston, if he will concede that they are forms of specific building contracts used by his client, the National Electric Products Corporation.

491 Mr. Houston: If your Honor please, I don't know. The question asked me was whether these things were used by National Electric Products Corporation. They have the name of National Electric Products Corporation on the page. Whether they were ever used, I haven't any notion. I do not know what these documents are. I have not read them, and I have not anything to compare them with at this time, so I could not make any such arrangement. If I could be convinced that they were used at any given time I would be very glad—

Mr. MacIntyre: Will you please find out and let us know, Mr. Houston?

Mr. Houston: Well, I can in the course of time. As I have told you, I think, I am not promising you at any given time because our people are very busy and some of the officers are away on vacations caused by overwork. That was the basis for our request for a postponement here. I will make that endeavor as quickly as possible but I do not want to give you any specific promise of a given time.

Mr. MacIntyre: I now make reference to Commission's Exhibit for identification 664 as a document secured by attorney-examiner Junius Robinson of the Federal Trade Commission from Robertson of the National Electric Products Corporation on August 17, 1939, in Pittsburgh, and I will ask Mr. Houston if he will concede that that is a form of consigned stock agreement used by the Na-

492 tional Electric Products Corporation.

Mr. Houston: Your Honor, again I am rather on the spot. I take it that if it was supplied to him it came from National. That much is clear. Mr. Robinson, I take it, is an employee of the Commission, can be readily contacted with, as Mr. Williams can; and again, I did not have the document. I do not want to be obstructive but I honestly don't know. I take it—

Trial Examiner Norwood: What is the number there?

Mr. MacIntyre: Commission's Exhibit No. 664.

Mr. Houston: This is Commission's Exhibit No. 664. I take it it is all one document clipped together.

I call your Honor's attention, for example, to the fact that there is a typewritten mimeograph insert in here. The remainder of the form is a printed form, and it may be that this is—this looks like a very temporary arrangement, to say the least; and I am willing to admit if Mr. Robinson so states, I take his word for the fact it came from National but as for what period that was used, if it was used at all, I am not in position to state, Mr. MacIntyre.

Mr. MacIntyre: I would like to state for the record that Mr. Junius Robinson, the attorney-examiner for the Federal Trade Commission, who secured this is no longer an employee of the Commission, and it would put it to some difficulty in securing him as a witness to identify this
493 at this time, but if it is necessary we can do it, but we would like to, in the meantime, if Mr. Houston—

Mr. Houston: When did he secure that, Mr. MacIntyre?

Mr. MacIntyre: August 17, 1939, according to his identifying marks.

Mr. Houston: And you want it to be identified as what?

Mr. MacIntyre: As a form of consigned stock agreement which was used by the National Electric Products Corporation.

Mr. Houston: Used during what period, sir?

Mr. MacIntyre: Well, in use at the time it was picked up August 17, 1939.

Mr. Houston: I will see if I can make that certification.

Mr. MacIntyre: If your Honor please, I make reference to Commission's Exhibit 667 for identification, and refer to it as a form of consigned stock agreement of the Laclede Steel Company, which was furnished by officials and attorneys of that company to an attorney-examiner of the Federal Trade Commission on December 7, 1939, and I will ask if there is any objection on the part of counsel for respondents to the identification of that document as I have stated.

Mr. Stewart: Well, I suggest that it be accepted
494 pending verification by Mr. Tucker, because we know nothing about it. My own idea would be that there would be no difficulty about it.

Mr. Gilpatric: I am willing to accept Mr. MacIntyre's statement.

Mr. MacIntyre: As to identification?

Mr. Austin: I have no objection to it.

Mr. MacIntyre: As to identification, and of course it is subject to check for any error.

Mr. Stewart: That is all I had in mind.

Mr. MacIntyre: We do not intend by this to preclude any respondents from showing any of these things are errors, if there are such.

Trial Examiner Norwood: You now offer them?

Mr. MacIntyre: I now offer Commission's Exhibit 667 into evidence.

Trial Examiner Norwood: It will be received as marked.

Mr. MacIntyre: The consigned stock agreement form of the Laclede Steel Company.

COMMISSION'S EXHIBIT NO. 667 was offered and received in evidence.

Mr. MacIntyre: If your Honor please, I now make reference to Commission's Exhibits for identification 495 668 and 669, and offer them into evidence as the consigned stock agreement forms of the M. B. Austin Company and the Triangle Conduit & Cable Co., Inc., as being in use during the year 1939, and I will ask Mr. Peyser, attorney for those companies, to concede those facts about the identification of the document.

Mr. Peyser: That is correct, Mr. MacIntyre, that is correct.

Mr. MacIntyre: I now offer into evidence Commission's Exhibits 668 and 669 as the consigned stock agreement forms of the M. B. Austin Company and Triangle Conduit & Cable Co., Inc.

Trial Examiner Norwood: Is there any objection?

They are received as marked.

COMMISSION'S EXHIBITS NOS. 668 and 669, were offered and received in evidence.

Mr. MacIntyre: I now make reference to Commission's Exhibit for identification 670, as the consigned stock agreement form of the respondent Cohoes Rolling Mill Company, and I will ask if there is any objection on the part of counsel for the respondents to that identification of that document as such.

Mr. Gilpatric: No objection.

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Mr. MacIntyre: I will offer this document into evi-
496 dence as the consigned stock agreement form of the Cohoes Rolling Mill Company as submitted to J. L. Frascati, attorney-examiner of the Federal Trade Commission on April 7, 1939, by the Cohoes Rolling Mill Company.

Trial Examiner Norwood: Is there any objection?

Received as marked.

COMMISSION'S EXHIBIT NO. 670, was offered and received in evidence.

Mr. MacIntyre: I now offer into evidence Commission's Exhibits for identification 637 to 641, inclusive, 642-A and B, 643, 644 and 645 as duplicates of letters which were written by representatives of these respondents, and which were secured from the files of these respondents, that is the Rigid Steel Conduit Association, by Mr. Williams and which have been conceded as coming from those files by Mr. Stewart.

Trial Examiner Norwood: Is there any objection?

Mr. Stewart: Just a moment. I have not seen them.

Mr. King: I have not seen them either.

Mr. MacIntyre: I would like to say that these are offered as admissions, written admissions by these respondents and their representatives and for the purpose of showing what the purpose of these respondents has been in their design and plan of controlling the industry.

497 (There was a pause in the proceedings.)

Trial Examiner Norwood: Are you ready to state your objections.

Mr. Stewart: If I ever get these back I will. Well, I shall start, if you wish.

Trial Examiner Norwood: Go ahead.

Mr. Stewart: As to Commission's Exhibit 637, I object for the reason the document shows on its face that it has an attached communication with it and, the attached communication not being offered in evidence, the exhibit is inadmissible as being incomplete. If you would like to look at it you can see (handing document to the Examiner). I have no objection to Exhibit 638. Of course, that is on the theory that it is a well settled principle of law of related evidence if you are going to offer a document which shows on its face that it is incomplete without the accompanying document, you can't offer the other document either. Now, do you want to rule separately or—

Trial Examiner Norwood: Go right ahead.

Mr. Stewart: As to 639 I submit it is utterly immaterial for the reason it shows on its face it is a communication—or, rather, purports to be a communication from Mr. Denton's secretary, and it also refers to communications which are not offered in evidence.

Trial Examiner Norwood: No objection to 638?

498 Mr. Stewart: I said that, sir. As to 640, I object for the reason that it shows on its face that an inclosure is not—it shows on its face that there was an inclosure with the letter, and without the inclosure the document is meaningless and is incompetent. As to Exhibit 641, the objection heretofore stated as to the inadmissibility of the document without the accompanying document is repeated. As to Exhibit 642, aside from the fact that it was a document found in the Rigid Steel Conduit files, there is no identification as to whom it is written. It shows on its face it is purely a personal communication between the writer of the letter and the addressee, containing a series of observations and opinions of the writer and in no way binding on any respondent other than the respondent whose name is signed to the letter. As to Exhibit 644—

Trial Examiner Norwood: This is addressed to Mr. J. G. Slater; isn't it?

Mr. Stewart: Yes, I don't know who J. G. Slater is, though, so far as the record goes.

Trial Examiner Norwood: Dear Joe.

Mr. Stewart: Dear Joe is right.

Trial Examiner Norwood: Go ahead.

Mr. Stewart: As to Exhibit 644, this exhibit shows on its face it is a personal communication between the writer, who apparently is connected with the National

499 Electrical Contractors Association, to Mr. Denton, and the Exhibit 644 merely showing the letter was passed on by Mr. Denton to R. S. Booth, no further showing being made as to the use or action of the Association with reference to the matter, it is incompetent and immaterial.

Trial Examiner Norwood: What number is that?

Mr. Stewart: 644. I guess that is all.

Mr. Gilpatric: Supplementing Mr. Stewart's objection, in view of the offer referring to this group of documents as being signed by—or sent by representatives of the respondents, to such characterization we certainly object.

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Youngstown Sheet & Tube Company objects to Commission's Exhibit 643 as referring to keeping track of protection contracts, inasmuch as the Youngstown Sheet & Tube never reported its contracts to the Association for that purpose and at the time of this exhibit was not a member of the Association.

Mr. Stewart: I thought, Mr. Examiner, that we had an understanding some time ago that whatever counsel on either side may say as to what a document is, that the document itself and not the characterization is what is going to govern.

Trial Examiner Norwood: That is correct. That is, counsels' statements are not evidence—

Mr. Austin: If your Honor please, I recognize the fact—

Trial Examiner Norwood: —unless it is an admission.

500 Mr. Austin: Your Honor has stated on several occasions that statements by counsel are not evidence. However, in spite of the fact that you have stated that anything that is admitted is admitted subject to connection, I feel with the continual statements of counsel for the Commission and his characterizations it makes it necessary for me again to object to the admission of these exhibits, 637 through 641, 642-A and B and 643 through 645, on the ground that they are incompetent, irrelevant and immaterial insofar as the National Electrical Wholesalers Association is concerned and any other clients I represent. Mr. MacIntyre made the statement that they are signed by representatives of the respondents, and a perusal of the documents indicates that there is no mention of a National Electrical Wholesalers name and there is no signature on any document by anybody who has been shown to be connected with the National Electrical Wholesalers Association or any other company.

Mr. King: In addition to the objections already stated, I object to the complete offer on the ground that it has not been properly identified and authenticated.

501 Trial Examiner Norwood: I shall reserve the ruling on this until after lunch hour.

502 Mr. Stewart: Very well.

Trial Examiner Norwood: Now, as to Commission's Exhibit 638 for identification, there is no objection to that?

Mr. Austin: Your Honor, I object to the whole offer.

Mr. Stewart: Of course, I think, as Mr. Austin suggested to the Examiner, the chief difficulty with the offers of my friend are he offers them against all the respondents and, of course, they are not the acts of all the respondents.

Trial Examiner Norwood: Of course, we have that understanding. Anything Mr. MacIntyre or any other counsel for the Commission or respondents may say to the contrary, notwithstanding, and it would go without any statement, that unless they substantially connect with the respondent they can not be considered against it.

Mr. Austin: If your Honor please, I understand that, and I don't like to delay this trial, but a record is made to be read, and when Mr. MacIntyre keeps repeating statements that are not true, it seems to me it is my duty to keep repeating that they are not true whether we have the agreement or not, and I intend to go on doing it.

Trial Examiner Norwood: Counsel may take issue with the statements of other counsel at any time. I think
503 he might take issue when he makes the statement, but anyway the counsel has an objection and Mr. King has his objection, and I shall rule on these after the lunch hour.

Mr. King: Your Honor asked if there was objection to 638, sir. I objected to the whole offer which includes that.

Trial Examiner Norwood: Yes. All right. Proceed, Mr. MacIntyre.

Mr. MacIntyre: Your Honor please, I now offer into evidence Commission's Exhibits for identification 648, 649, 650, 651, 652, 653, 654 and 655, as documents coming from the files of the Rigid Steel Conduit Association showing collective activity of these respondents in their handling of a common freight rate problem of theirs, and in connection with their efforts to control prices in the industry. It is probable that a couple of these documents are duplicates of other documents which you received in evidence yesterday, but we offer these at this time because they show an additional fact in that they are from the possession of the Rigid Steel Conduit Association. Those offered yesterday were from the possession of another one of the respondents which had connection with the Rigid Steel Conduit Association, and as soon as we can, of course, get concession from the respondents of the fact that is shown by

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the duplicates of these documents being duplicates of
504 the others, and with these coming from the Rigid Steel Conduit Association files, I will ask for leave to withdraw any of which are duplicates. These documents are further offered as records of the respondents and as admissions by them, written admissions, of their activities, of these collective activities which are in issue under the complaint, 648 to 655, inclusive.

Trial Examiner Norwood: Now, off the record.

(Discussion off the record.)

Mr. King: If your Honor please, I object to the Exhibits 648 to 655 on the ground the record shows that they are obviously not properly authenticated. All Mr. Stewart said was that they were taken from files that he had but he didn't know whether they were authentic or not.

Trial Examiner Norwood: Any further objection? Are there any further objections to this latest proffer? These papers that were taken from the files of a respondent will be assumed to be what they purport to be unless the contrary is shown. I consider that is sufficient identification. The objections are overruled and the documents are received as marked, Commission's Exhibits 648 to 655.

COMMISSION'S EXHIBITS NOS. 648 to 655, were offered and received in evidence.

Trial Examiner Norwood: Anything else new before we adjourn for lunch?

505 Mr. MacIntyre: No. The next thing that we have we will probably take longer to handle than we will have before adjournment, so I would like to come back early and start on the additional problem than to undertake and not be able to finish before adjournment today at noon.

(Whereupon, at 12:10 o'clock p. m. a recess was taken until 1 o'clock p. m.)

506 Afternoon Session, 1 P. M.

Trial Examiner Norwood: Gentlemen, let us come to order.

Proceed.

I have not entirely completed looking over these papers. I will rule on them before the session is over.

Proceed, Mr. MacIntyre.

Mr. MacIntyre: I would like to have this paper marked as Commission's Exhibit No. 76, a number which has been reserved.

(The document was thereupon marked "Commission's Exhibit No. 76," for identification.)

Mr. MacIntyre: If your Honor please, we have here a document which has been marked for identification Commission's Exhibit No. 76 relating to the delivery charges and freight rate schedules of the M. B. Austin Company.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: On the record.

Mr. MacIntyre: I offer this document into evidence at this time.

Trial Examiner Norwood: Is there any objection?

Mr. Stewart: I do not know what it is, sir.

Trial Examiner Norwood: Let counsel see it.

(Mr. MacIntyre hands paper to Mr. Stewart.)

507 Mr. Stewart: Well, there is nothing we can do about it anyhow, if we did object; Mr. Peyser has made the stipulation.

Trial Examiner Norwood: Received as marked, with the usual understanding and agreements.

The exhibit is received.

COMMISSION'S EXHIBIT NO. 76, was offered and received in evidence.

Mr. MacIntyre: As I understand it, there is no ruling on the pending exhibits at this time.

If your Honor please, I now offer into evidence Commission's Exhibits for identification 656, 657, 658, 659, 660-A to E, inclusive, 661-A to F, 689-A and B and 690-A and B, as minutes and copies of minutes of the Rigid Steel Conduit Association, which as the record shows here are papers submitted by representatives and attorneys of the Rigid Steel Conduit Association to, that is, from its files to representatives of the Federal Trade Commission.

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I further offer them as records of written admissions by respondents here and records of their activities for all purposes.

508 Trial Examiner Norwood: On the record.

Are there any objections to the proffer?

Mr. Gilpatric: Yes, there are, your Honor.

Trial Examiner Norwood: Go ahead.

Mr. Gilpatric: In view of the statements which accompanied these offers by counsel for the Commission, I have got to repeat my objection again to Commission's Exhibit 656 through 659, inclusive, and 689 and 690 on behalf of the Youngstown Sheet & Tube Company, which we say was not a member of the Association during the periods referred to in those minutes, and as to Commission's Exhibits 660 and 661, they are subject to the hearsay objection we have made before.

Mr. Houston: If your Honor please, I object to these minutes as not being properly qualified. The statement has been made, I believe by Mr. Stewart,—if I am incorrect please tell me, Mr. Stewart—that these were secured from the files which had been sent to him as files of Rigid Steel Conduit Association, and I submit that Mr. Stewart's statement goes no further than stating just what it says, that he has no basis for knowing that they were those and that, who handled them in the meantime has not been shown. They are perfectly open to be tampered with in every sense of the word, and in view of the fact that they have been offered for everything they are worth, it seems to me the worst sort of evidence to submit against these respondents.

509 Your Honor has made the suggestion that the Rigid Steel Conduit Association is a respondent here, but I would like to point out that I think it is shown in the record that the Rigid Steel Conduit Association is quite dead, so why bring a dead man into the case, and if that is the device the Commission uses in order to secure the admission of these into evidence, I certainly object.

Trial Examiner Norwood: Is there any further objection?

Mr. Austin: If your Honor please, once again in view of the statements of Mr. MacIntyre to the effect that he offers these as written records of "these respondents," I find it necessary to object to these exhibits as numbered,

on the ground that they are incompetent, irrelevant and immaterial in respect to the clients I represent.

Trial Examiner Norwood: Is there any further objection?

What have you to say to that?

Mr. MacIntyre: If your Honor please, with respect to the inability or stated inability of counsel for respondents to admit or deny whether these papers are what they purport to be, I can only say that they are in much better position to do that than I am. We secured the papers from them and they in turn have secured them from their clients.

If the people, clients of these attorneys who purport-
510 edly wrote these papers are in no position to deny them, then I submit that they must be taken as admissions just as if someone had heard that man make a statement orally and when called to the stand would say, "Well, I don't know whether I made it or not. I don't recall."

Trial Examiner Norwood: Well, now, was it admitted or shown that they came from the files of the respondents?

Mr. MacIntyre: Of the Rigid Steel Conduit Association?

Trial Examiner Norwood: Yes.

Mr. MacIntyre: The voluntary unincorporated association of all of these conduit sellers.

Trial Examiner Norwood: Well, that has been admitted, has it not?

Mr. MacIntyre: Mr. Stewart admitted that this morning.

Mr. Stewart: I did not do that.

Mr. Gilpatric: I did not understand that, that he admitted it.

Mr. Houston: Ask Mr. Stewart.

Mr. Stewart: I did not hear you.

Trial Examiner Norwood: Was not it admitted these papers came from the files of one of the respondents?

Mr. MacIntyre: The Rigid Steel Conduit Association.

Trial Examiner Norwood: Yes, Commission's Ex-
511 hibit 656 to 690.

Mr. MacIntyre: Isn't that correct, Mr. Stewart?

Mr. Stewart: These came from the files that I spoke about this morning, sent to me in Pittsburgh from the office of the Association on 42nd Street in New York. That is all I know about them.

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Trial Examiner Norwood: Mr. Houston?

Mr. Houston: Well, your Honor, I deny that there is such a respondent, but to call them an association—

Trial Examiner Norwood: Well, counsel has made his point there.

Mr. Houston: And I would like to point out, Mr. MacIntyre's remarks amount to, "I can't prove my case, therefore the burden is on the respondents to prove it for me."

Trial Examiner Norwood: The objection is overruled, and the exhibits are received as marked.

COMMISSION'S EXHIBITS NOS. 656, 657, 658, 659, 660-A TO E, 661-A TO F, inclusive, 689-A AND B, and 690-A AND B were offered and received in evidence.

Mr. Stewart: Mr. Examiner, let me clear the record. You understand, that the record shows that this Association was dissolved in April, April 1st, 1940. Apparently, thereafter the records, whatever they were, were left in this office on 42nd Street for a while and they then
512 were moved to the Chelsea Warehouse, and at the instance of Mr. Quinn, who was the acting treasurer, or something of whatever it is that was left, I had the records sent to me, and I put them in a room in my building and they consisted of five filing cases, and whatever is there is there, and that is all I know about it.

Trial Examiner Norwood: I think counsel made that clear.

Now, with respect to this pending offer here of Commission's Exhibit 637 to 641, 642, 643 and 638, I want to ask Mr. MacIntyre, this Commission's Exhibit 637 here is a letter of transmittal. Are you offering that for any purpose for which it will be necessary to produce the matter that was transmitted with the letter, or for what purpose are you offering that?

Mr. MacIntyre: I am offering 637 to show that as late—I mean as early as December 9, 1936, an official of the Rigid Steel Conduit Association was writing to another official of one of the respondents, the Organization Service Corporation, which had by that time been—had become affiliated with the Rigid Steel Conduit Association in its management, to the effect that there were certain lists relative to cancellation of contracts being forwarded from one to the other, and we will have more in the record before we get through concerning this cancellation of

513 contracts to which we hope to attach this letter more firmly.

Trial Examiner Norwood: Well, this 639 is of the same purport, tenor, that is, it is of the same nature, rather.

Mr. Stewart: Of course, I might suggest to you, incidentally, that neither Penn Denton nor Booth—Booth was the secretary at that time but Penn Denton was simply an employee.

Trial Examiner Norwood: Now, as to this 642-A, B, have you shown who Mr. J. G. Slater is and who the writer of this letter is?

Mr. MacIntyre: Yes; I think that the record shows who Mr. McAuliffe is, president of the respondent, Triangle Conduit & Cable Co., Inc.

Is that true, Mr. Peyser?

Mr. Peyser: Yes, sir.

Mr. MacIntyre: Mr. Slater—J. G. Slater is an official of that company also; isn't he?

Mr. Peyser: Yes.

Trial Examiner Norwood: It appears who Mr. A. Penn Denton is.

Mr. Stewart: You say doesn't? Oh, yes.

Mr. MacIntyre: I think we have that in the record a number of times.

Mr. Peyser: May I see that exhibit, if your Honor please?

514 Trial Examiner Norwood: What is that?

Mr. Peyser: May I see that exhibit, please, the one with Denton's name on it?

Mr. Stewart: Of course, that is a rubber stamp signature. It is not McAuliffe's signature.

Trial Examiner Norwood: The objection is overruled and the following exhibits are received in evidence: Commission's Exhibits for identification 637 to 641, inclusive, 642-A, B, 643, 644, 645.

COMMISSION'S EXHIBITS NOS. 637 TO 641, inclusive, 642 A AND B, 643, 644 AND 645 were offered and received in evidence.

Trial Examiner Norwood: Proceed.

Mr. MacIntyre: Has a ruling been made on 648 to 655, inclusive?

Mr. Stewart: Yes.

Trial Examiner Norwood: Yes; they have been received in evidence. Go ahead.

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524 Mr. MacIntyre: If your Honor please, I now make reference to Commission's Exhibit for identification 412 to 445, inclusive, on the reverse sides of each they bear certifications by Mr. Poskanzer, attorney for respondent Cohoes Rolling Mill Company, to the effect that they were produced from the files and furnished by the Cohoes Rolling Mill Company, and that they are photostats of genuine and authentic documents as they purport to be, and will ask that counsel for the respondents, whether they offer any objection at this time to their identification as such?

Mr. Gilpatric: No.

Mr. Stewart: No.

Mr. MacIntyre: Then, if your Honor please, I offer these documents into evidence as records and as admissions by the respondents who are shown by the document to have made the written admissions.

Trial Examiner Norwood: Give them to counsel.

Mr. MacIntyre: For all purposes.

Trial Examiner Norwood: Is there any objection?

Mr. Robison: May we look at them first?

Mr. MacIntyre: If your Honor please, I withdraw the offer of Commission's Exhibit for identification 415-A 525 to D.

Trial Examiner Norwood: Are there any objections to the proffer?

Mr. Stewart: As to such of these exhibits, and with your permission I shall not be specific as to which ones they are, but as in this group, Commission's Exhibits 412 to 445, insofar as they relate to the subject matter of the activities of a particular respondent or any of the other respondents during the existence of the National Industrial Recovery Act, they are objected to as being incompetent, immaterial and irrelevant to establish any fact at issue under the pleadings in this case, or any obligation of the respondents other than those required by the National Industrial Recovery Act.

Trial Examiner Norwood: Is there any further objection?

Mr. King: I have not finished reading them, sir.

(There was a pause in the proceedings.)

Trial Examiner Norwood: Gentlemen, can't you make your objection now?

Mr. Austin: I have no objection.

Mr. King: So far I have no objection except as heretofore stated by me, but I have not quite finished reading.

Trial Examiner Norwood: The objection is overruled and the exhibits are received as marked, Commission's
526 Exhibits 412 to 414-A to D, inclusive, 416 to 445.

COMMISSION'S EXHIBITS NOS. 412 TO 414-A TO D, inclusive, 416 TO 445 were offered and received in evidence.

Mr. MacIntyre: If your Honor please, I now make reference to Commission's Exhibit for identification 446 and 447, which bear on the reverse side thereof certificates by Mr. Houston, attorney for the National Electric Products Corporation to the effect that they were furnished by that company from its files, and that they are authentic and genuine documents of what they purport to be, and I ask if there is any objection to the authenticity and the identification of those two.

I offer the two documents into evidence as admissions and as records of the respondents.

Trial Examiner Norwood: Is there any objection?

Mr. Stewart: I beg your pardon.

Trial Examiner Norwood: Are there any objections to this last proffer of Commission's Exhibits 446 and 447?

Mr. King: Only the standing objection, so far as my client is concerned.

Trial Examiner Norwood: The objection is over-
527 ruled and they are received as marked, Commission's Exhibits 446 and 447.

COMMISSION'S EXHIBITS NOS. 446 AND 447 were offered and received in evidence.

Trial Examiner Norwood: Proceed, Mr. MacIntyre.

Mr. MacIntyre: If your Honor please, I now make reference to Commission's Exhibits for identification 448 to 474, inclusive, each of which on the reverse side bears a certificate by Mr. Morton Peyser, attorney for the M. B. Austin Company, to the effect that these documents were furnished by the M. B. Austin Company from its files, and that they are genuine, authentic documents which they purport to be.

I will ask Mr. Peyser if he now concedes that.

Mr. Peyser: Yes, sir.

Mr. MacIntyre: And a number in this group purport to be written by, they are carbon copies of letters and purport to have been written by AHF. Do you know whether

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or not the M. B. Austin Company had some official in its employ at the time who had such initials, Mr. Peyser?

Mr. Peyser: Yes.

Mr. MacIntyre: Who?

Mr. Peyser: Mr. Friend.

Mr. MacIntyre: A. H. Friend?

528 Mr. Peyser: Yes.

Mr. MacIntyre: What can you say about such initials on such letters in this group?

Mr. Peyser: Only that the letters, I have been advised by Mr. Friend, that those letters were taken from the Austin file and I therefore assume that the letter is a carbon copy of the letter apparently written by Mr. Friend.

Mr. MacIntyre: And certain of them in this group bear the initials "MBA," and the word "president." Did you have anyone to your knowledge in the company at the time carrying those initials?

Mr. Peyser: I assume that that refers to M. B. Austin, then president of our company.

Mr. Stewart: Let this go on the record: May I ask as to whether Mr. MacIntyre, in view of Mr. Peyser's statement that Mr. M. B. Austin died in 1941 will concede that to be a fact for the purpose of this case?

Mr. MacIntyre: I will say that with Mr. Peyser making that statement I certainly have no doubt that such is the fact.

Trial Examiner Norwood: Proceed.

529 Mr. MacIntyre: If your Honor please, I now offer into the record Commission's Exhibit for identification 448 to 474, inclusive, as written admissions made by certain of these respondents and as records of activities of certain of these respondents that are in issue here.

Trial Examiner Norwood: Is there any objection?

Mr. Stewart: Well, we haven't seen these.

Trial Examiner Norwood: On the record.

Is there any further objection?

Mr. Stewart: Oh, yes, sir, many objections to these but until I get them back I can't state them.

(There is a pause in the proceedings.)

Mr. Stewart: As to Commission's Exhibit 457 and 461 through 467, the documents relating to armored cables, which is a product not involved in this proceeding, and hence anything in the documents is utterly immaterial.

Commission's Exhibit 470 has to do with thin wall lead conduit, which is not rigid steel conduit, and hence that communication has nothing to do with any matter in controversy.

Mr. MacIntyre: What is the number of that?

Mr. Stewart: Commission's Exhibit No. 470.

530 Mr. MacIntyre: Thin walled?

Mr. Stewart: Yes.

Now, as to Commission's Exhibit 471, the document does not show on its face that it has any reference at all to Rigid Steel Conduit; in fact, it indicates on its face that it has to do with a totally different product, and hence it is inadmissible in this case.

Now, as to the documents generally, if they are offered simply as admissions and as against the persons who wrote the letters or the companies involved, that is one matter, but if they are offered generally, then I object on the ground that they show on their face that they are wholly communications between Triangle or its agents and contain matters which are wholly as between the two, they contain expressions of opinion and hopes which could be in no way binding upon any of the other respondents, and as to the letters of M. B. Austin, who the record now shows is dead, then to admit them with their contents as against the other respondent, it would be depriving the respondent of the right of cross-examination so as to ascertain, for example, as to whether or not the author of the letter had knowledge of the facts that he writes.

Now, I should appreciate it, Mr. Examiner, if you would look at these documents.

Trial Examiner Norwood: How many of those are 531 signed by this dead person?

Mr. Stewart: Austin?

Trial Examiner Norwood: Yes. What are the numbers?

Mr. Stewart: I will have to tell you. Commission's Exhibits Nos. 455, 456, 473 and 474.

Now, may I say to you that the seriousness of this objection, especially the latter part, of course as to the documents related to some products other than rigid steel conduit I take it they should not come into this case, they have no bearing whatever on any issue here, but as to Mr. Austin's letters, if you will read them you will see that he is undoubtedly relying on information he obtained

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from some source, you can not tell where he got it from, he is expressing his opinion, he is giving his hopes, and unless we have an opportunity of examining—

Trial Examiner Norwood: Are those letters introduced to show the truth of the statements contained therein?

Mr. Stewart: Sir?

Trial Examiner Norwood: Are those letters introduced to show the truth of the statements contained therein?

Mr. Stewart: Well, I gather from the offer that—

Trial Examiner Norwood: I am asking Mr. MacIntyre.

Mr. MacIntyre: As to these letters of Mr. Austin, Commission's Exhibits Nos. 455, 456, 473 and 474, I am willing to limit the offer as to those merely to show that Mr. 532 Austin made those written declarations and admissions and they are his records, and I will not insist that they be taken for the truth of the statements, but at least for the fact that Mr. Austin made those written statements, admissions of his.

Trial Examiner Norwood: Proceed.

Mr. Stewart: Well, I take it that—excuse me.

Mr. MacIntyre: That does not mean, however, that we would not argue that at some time weight should be given to a statement made like that on the basis that it be truthful until proven to be otherwise, but on the strength of it having been made as an admission, but I am not insisting that they are true and correct statements in the offer here. I am saying, however, that—

Trial Examiner Norwood: Do you wish to use it as a basis for argument that they are true, and they are true because they are therein stated?

Mr. MacIntyre: That is it.

Mr. Stewart: That is right.

Trial Examiner Norwood: Well, go ahead. I shall have to examine the letters.

Mr. Stewart: Yes, sir.

Mr. MacIntyre: In other words, whatever truth we are proving as to the statements would be based upon the argument, the argument of an inference to be drawn 533 from them that a man such as Mr. Austin would not be running around making such admissions against his interest as those letters show unless the statements thus made were in fact true.

Trial Examiner Norwood: Well, proceed with your objection, sir.

Mr. Peyser: Mr. Stewart, may I make one statement? I would like to point out, though, Mr. Examiner, in connection with these matters, you must remember that M. B. Austin & Company was not, nor has it been so proven to be a member of the Rigid Conduit Association, nor did it ever receive communications of this respondent, Organization Service Corporation. These are simply letters between Triangle and Austin.

Trial Examiner Norwood: Well, that deceased person —Mr. Austin, is it?

Mr. Austin: Mr. M. B. Austin.

Trial Examiner Norwood: Yes. He was a respondent?

Mr. Stewart: No, he is dead. He was not a respondent.

Trial Examiner Norwood: His company here was a respondent?

Mr. Stewart: His company, yes.

Trial Examiner Norwood: Go ahead.

Mr. Stewart: I do not know that I can add anything.

534 Trial Examiner Norwood: I shall have to examine the letters.

Mr. MacIntyre: Now, on further thought, if your Honor please, and before the ruling I must state I go back to the original offer, and offer them Commission's Exhibits 455, 456, 473, 474, for all purposes notwithstanding the statement I just made about them.

Trial Examiner Norwood: Yes.

Mr. MacIntyre: I do that because I do not want any fault concerning the offers.

Trial Examiner Norwood: On the record.

Any further objections? Objections are overruled and the exhibits are received as marked.

Mr. Stewart: Pardon me, but even if they relate to armored cable and thin wall conduit?

Trial Examiner Norwood: Yes.

Mr. Stewart: They have nothing to do with rigid steel conduit.

Trial Examiner Norwood: To show the method. I think so. 448 to 474 received in evidence.

COMMISSION'S EXHIBITS NOS. 448 TO 474 were offered and received in evidence.

535 Mr. MacIntyre: If your Honor please, I now refer to Commission's Exhibits for identification 475 to 478, inclusive, and 479-A to G, inclusive, and will ask Mr. Stewart—I mean Mr. Houston, if he will—strike this last

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statement, "I will ask Mr. Houston." The reverse side of each of these documents carries a certificate by Mr. Houston to the effect that they were furnished from the files and by the National Electric Products Corporation and that the documents are genuine and authentic as they purport to be on their face. I will ask Mr. Stewart—I mean Mr. Houston if he agrees as to that.

Mr. Houston: Yes, where my signature appears.

Mr. MacIntyre: I now offer the documents into evidence as admissions and records of the respondents.

Trial Examiner Norwood: Any objection?

Mr. Stewart: No. For my part, I join in offering them in evidence. If we can't protect ourselves against those things we might as well quit.

Trial Examiner Norwood: Against what things?

Mr. Stewart: Fake building contracts, over-buying, cheating on the building contracts.

Mr. King: I haven't read them, but I don't want Mr. Stewart's statement to stand for Clayton Mark & Company that he would offer them himself.

Trial Examiner Norwood: Yes.

536 Mr. King: It doesn't apply to Clayton Mark, certainly, until I have a chance to read them.

Mr. Stewart: Well, I shouldn't think it would apply to anybody but myself. That is all I said.

Trial Examiner Norwood: I will be glad to hear from counsel as soon as they can make their objections.

Mr. Austin: No objection.

Trial Examiner Norwood: Received as marked.

Mr. MacIntyre: There are no objections to these, as I understand?

Mr. Austin: Except the standing objections.

Trial Examiner Norwood: 475 to 478 and 479-A to C.

COMMISSION'S EXHIBITS NOS. 475 TO 478, inclusive, and 479-A to C were offered and received in evidence.

Trial Examiner Norwood: Anything further? Anything further?

Mr. MacIntyre: I have other documents here that I can continue on the record with, unless you desire to adjourn now. I am afraid if you start with these others it is going to take some time to handle.

Mr. Stewart: For my part, I am going to be among the missing when you start.

Trial Examiner Norwood: Counsel has requested
537 that we adjourn the hearing until tomorrow in New York, so this hearing is now adjourned to reconvene in Parlor C, Hotel Abbey, 22nd Floor, 51st Street near Broadway—east of Broadway, New York City, at 10 o'clock a. m., September 25th.

Mr. MacIntyre: That is 10 o'clock eastern standard time?

Mr. Stewart: No; daylight.

Trial Examiner Norwood: Eastern Standard time.

Mr. Stewart: Oh, 11, then, daylight?

Mr. Welch: That would be 11 daylight.

Trial Examiner Norwood: That is right.

Mr. Stewart: Because you said daylight the other day.

Trial Examiner Norwood: 10, eastern standard time. That will be 11 o'clock daylight saving, so there will be no complaint.

(Whereupon, at 3:25 o'clock p. m. the hearing was adjourned to September 25, 1941, at 10 a. m. eastern standard time, Hotel Abbey, New York, New York.)

540 Proceedings.

Trial Examiner Norwood: Pursuant to adjournment on yesterday, the hearing on Docket No. 4452 is reconvened at 10 o'clock A. M. Eastern Standard Time, September 25, 1941, in Parlor C, on the 22nd floor of the Hotel Abbey, New York, N. Y.

Please note the appearances.

Proceed, Mr. MacIntyre.

Mr. MacIntyre: If your Honor please, I make reference to Commission's exhibits, for identification, 480 and 481, which bear on the reverse side thereof certificates, on Commission's Exhibit 480, from the attorney of the Republic Steel Corporation, Steel & Tubes and Fretz-Moon, to the effect that it is a genuine, authentic letter from R. M. Little, of the Fretz-Moon Tube Company, and that it was secured from or furnished by that company; Commission's Exhibit 481, certified to by the same attorney, as having been furnished by and from the files of Fretz-Moon Tube Company, and as further certified as a genuine authentic letter by R. S. Booth, the latter certification having been made by Mr. Welch.

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I will ask if there is any objection to those identifications.

541 Mr. MacIntyre: If your Honor please, I now offer Commission's Exhibits 480 and 481 into evidence.

Trial Examiner Norwood: Is there any objection?

Mr. MacIntyre: I would like to add to that offer that the documents are offered as admissions and records of the Respondents.

Trial Examiner Norwood: Have all counsel seen the documents?

Any objection?

Mr. King: There is no objection other than the standing objection of Clayton, Mark & Company.

Trial Examiner Norwood: The exhibits are received as marked.

COMMISSION'S EXHIBITS 480 AND 481 were offered and received in evidence.

Trial Examiner Norwood: Proceed.

Mr. MacIntyre: If your Honor please, I now make reference to Commission's Exhibits for identification, 480 to 485, inclusive, and 486-A and B, which have been certified to by Mr. Welch, attorney for the Organization Service Corporation as forms, reports and communications, as genuine, and authentic forms, reports and communi-

542 cations which they purport to be on their face, and I offer them as such and as admissions of the Respondents.

Trial Examiner Norwood: Is there any objection to the proffer?

Mr. Stewart: No objection.

Trial Examiner Norwood: They are received as marked.

Mr. Austin: If your Honor please, these again are marked as admissions against Respondents. I would like to point out, no mention of the National Electrical Wholesalers Association or of any of my clients.

Mr. King: There is no objection. May we understand there is a standing objection?

Trial Examiner Norwood: Yes, that is the understanding of counsel, and counsel are perfectly safe in that, without making any objections hereafter, that nothing is going to count against their clients unless connection is made through the Association or otherwise.

Mr. Stewart: I assume that is what the case is all about.

COMMISSION'S EXHIBITS 482 TO 485, inclusive, and 486-A AND B, were offered and received in evidence.

Trial Examiner Norwood: Proceed.

543 Mr. MacIntyre: Well, I want the record to be clear as to the offer. They are offered as admissions of Respondents. The admission by any respondent becomes the admission of all, and that is the reason the offer is made in the words it is made.

Mr. Peyser: Except, your Honor—

Trial Examiner Norwood: Now, gentlemen, please let us not start the discussion about this thing. That is the very substance of the case. You can argue that before the Commission.

Proceed, Mr. MacIntyre, with your exhibits.

Mr. MacIntyre: If your Honor please, I now make reference to Commission's Exhibits for identification, 487-A to P, inclusive, and to the certifications appearing on the reverse side of each of the sheets included in the offer by Mr. Welch, to the effect that they are genuine and authentic documents of what they purport to be, that is, forms, communications and reports of those who are shown on the face to have made them.

I also make reference to Commision's Exhibits for identification 488-A to D, as forms used by the Rigid Steel Conduit Association in connection with its closed transaction inquiries, which have been certified on the reverse side of each to that effect, that is, to the effect that they are genuine and authentic forms so used; certifications
544 have been made by Mr. Welch as attorney for the Organization Service Corporation.

I now make reference to Commission's Exhibits, for identification, 489-A to H, inclusive, as forms, reports and communications of the Organization Service Corporation, Rigid Steel Conduit Association, concerning closed transaction inquiries and acknowledgments of the same, all of which have been certified to by Mr. Welch, as attorney for the Organization Service Corporation, Robert S. Booth, and Herbert S. Blake.

I now refer to Commission's Exhibits, for identification, 490-A to N, inclusive, as communications, forms and reports of the Organization Service Corporation, Rigid Steel Conduit Association and others shown on the face thereof, and the certifications on the reverse sides thereof, certifications as to the genuineness, and authenticity of them being

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what they purport to be, having been made by Mr. Welch, attorney for the Organization Service Corporation.

I now make reference to Commission's Exhibits, for identification, 491-A to M, inclusive, as requests, communications, forms used by and passing between the officials and representatives of the Organization Service Corporation, Rigid Steel Conduit Association, and others of these Respondents, as is shown on the face thereof, and as
545 certified to by Mr. Welch, attorney for the Organization Service Corporation as being authentic and genuine, that is, authentic documents of what they purport to be.

In that connection, I want to point out that, for example, in the lower right corner of Commission's Exhibits, for identification, 491-A, in the handwriting of Mr. Welch, there appears the statement that it was written by,—that particular document was written by R. S. Booth. It merely carries the typewritten initials "R. S. B." I believe that Mr. Welch is prepared at this time to state that as to those documents, which carries that quoting "R. S. B." in addition to this one, and which are included in the group are as shown by his certifications to be the communications of Robert S. Booth.

Is that true, Mr. Welch?

Mr. Welch: That is right.

Mr. MacIntyre: If your Honor please, I now offer all of these documents, Commission's Exhibits 487-A to P, inclusive, 488-A to D, 489-A to H, 490-A to N, and 491-A to M, inclusive, in evidence, as communications, reports, forms, admissions and other records of these Respondents.
546 Is there any objection to the receipt of those exhibits in evidence?

Mr. Welch: I think there should be some clarification of certain exhibits.

Mr. MacIntyre: I will attempt to do that after study of them has been made by counsel.

Trial Examiner Norwood: Yes.

Go ahead, Mr. MacIntyre.

Mr. Robison: In reply to your inquiry, we urge the general objection of not applying to our client, Youngstown.

Trial Examiner Norwood: Mr. MacIntyre, make your statement now.

Mr. MacIntyre: I cannot until I get the documents.

Trial Examiner Norwood: On the record.

Are any of counsel ready to state their objections?

Mr. MacIntyre: Well, I would like to make a statement of objections, if I may.

Trial Examiner Norwood: Go ahead.

547 Mr. MacIntyre: If your Honor please, at the request of Mr. Welch, I wish to make the following statement with respect to the following documents:

489D is a report from the Central Tube Company in response to the inquiry, but nothing to show in the black type appearing thereon being the report of the company in response to that inquiry.

489E carries in black type the report of the Cohoes Rolling Mill Company in response to the inquiry involved.

Mr. Welch: May I interrupt? I want it to be clear that this is not just a letter from the Organization Service. The document is a reply to that inquiry as well, and without that explanation you don't know just exactly what it is.

Mr. MacIntyre: In other words, as to the documents, the mimeographed material and the multigraphed material is the inquiry; the black type which is filled in by typewriter is the reply of the company whose name is shown at the bottom in black also.

As to 489F, Enameled Metal Company's reply is shown in black type.

As to 489H, the reply of Steel & Tubes and Fretz-Moon is shown in black type.

As to 490D, the reply of the General Electric Com-
548 pany is shown in black type as distinguished from the multigraphed or mimeographed material.

As to 490E, the reply of Clayton Mark and Company, signed by D. W. Droll, is made in black type.

As to 490G, the reply of the National Electric Products Corporation, signed by C. J. Kim, is made in black type.

As to 490H, the reply of Steelduct is made in black type as shown on the face thereof.

As to 490I, the reply of the Triangle Company by Hawks of that company is made in black type as shown on the face thereof.

490J carries on the face in black type the reply of Walker Brothers.

490N carries in black type on the face thereof the reply of Youngstown Sheet and Tube Company.

As to 491B, the black type appearing on the face thereof is the reply of the Central Tube Company.

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491D carries in black type on the face thereof the reply of the Cohoes Rolling Mill Company.

491E carries on the face thereof in black type the reply of the Enameled Metals Company.

491F carries in black type on the face thereof the reply of Garland Manufacturing Company.

491G carries on the face thereof in black type the
549 reply of the General Electric Company.

491H carries in black type on the face thereof the reply of Clayton Mark Company.

491I carries in black type on the face thereof the reply of the National Electric Products Corporation.

491J carries in black type on the face thereof the reply of the Steelduct Company.

491K carries in black type on the face thereof the reply of the Triangle, signed "Hawks", in black type.

491L carries in black type on the face thereof the reply of Walker Brothers.

491M carries in black type on the fact thereof the reply of the Youngstown Sheet and Tube Company.

That is in accordance with your certification and understanding, is it, Mr. Welch?

Mr. Welch: That is right.

Trial Examiner Norwood: Any objections to the proffer? The general objection is overruled. Received and marked.

COMMISSION'S EXHIBITS NOS. 487 A to P, 488 A to D, 489 A to H, 490 A to M, and 491 A to N all correlated numbers inclusive, were offered and received in evidence.

Mr. MacIntyre: If your Honor please, I now make
550 reference to Commission's Exhibits 492, a letter from Robert S. Booth to the National Electric Products Corporation; 493, a letter from the National Electric Products Corporation to the Organization Service Corporation; 494, a letter from the Organization Service Corporation to I. A. Bennett, National Electric Products Corporation; 495—

Mr. MacIntyre: 495, an inquiry by the Rigid Steel Conduit Association and a reply thereto by National Electric Products Corporation, which has been certified to as to the authenticity and genuineness of what they purport to be, as shown on the reverse sides thereof by both Mr. Houston and Mr. Welch.

I offer those in evidence as admissions and records of these Respondents.

Mr. Poskanzer: What was that last?

Trial Examiner Norwood: Will the reporter read the record?

(Record read by reporter.)

Trial Examiner Norwood: On the record. Any objection to the proffer?

551 Mr. Austin: No objection.

Trial Examiner Norwood: Received and marked.

Mr. MacIntyre: No objections stated to those?

Trial Examiner Norwood: No. The general objection is overruled.

COMMISSION'S EXHIBITS NOS. 492, 493, 494, and 495 were offered and received in evidence.

Mr. MacIntyre: If your Honor please, I now make reference to Commission's Exhibits for identification 496 and 497 which have been certified to by both the attorneys for the Republic Steel Corporation, Steel and Tube, Fretz-Moon and Mr. Welch, attorney for Organization Service Corporation, to the effect that 496 is a letter dated February 10, 1938 from Robert S. Booth to Fretz-Moon; 497 is a report dated February 10, 1938, from Robert S. Booth to Fretz-Moon, and a reply on the face thereof.

I offer these in evidence as admissions and records of the Respondents.

Trial Examiner Norwood: Any objection? Off the record.

(Discussion off the record.)

Trial Examiner Norwood: On the record. The Exhibits are received in evidence. Proceed.

COMMISSION'S EXHIBITS NOS. 496 and 497
552 were offered and received in evidence.

Mr. MacIntyre: If your Honor please, I now make reference to Commission's Exhibits for identification 498 to 518, inclusive, all of which have been certified to as genuine and authentic reports for the Rigid Steel Conduit Association by Robert S. Booth, and has been certified as such by Mr. Welch, his attorney here.

They are dated August 6th, 10th—

Mr. MacIntyre: August 6th, 10th, 30, September 1, October 7, October 11, November 10, November 10, December 1, December 1, 1937, January 6, 1937—

553 Mr. Robison: Thirty-seven or thirty-eight?

Mr. MacIntyre: It should have been thirty-eight, but it is thirty-seven appearing on the document.

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January 7, 1938, February 10, February 10, March 10, April 1, April 1, April 27, and April 27, 1938.

I offer these into evidence as reports, records and admissions of the Respondents.

Trial Examiner Norwood: Any objection?

Received and marked.

COMMISSION'S EXHIBITS NOS. 498 to 518, inclusive, were offered and received in evidence.

Trial Examiner Norwood: Proceed.

Mr. MacIntyre: If your Honor please, I now make reference to the following documents which have been certified to by Mr. Welch, attorney for Organization Service Corporation, as being genuine and authentic; Commission's Exhibit, for identification 519-A is a memorandum from Garland Manufacturing Company to R. S. Booth, dated May 2, 1938; 519-B, the upper half of which is a memorandum from R. S. Booth to H. G. Morrow, dated May 6, 1938; the lower half of which is a reply from Mr. Morrow; 519-C is a communication from R. S. Booth, May 6, 1938; 519-D dated May 25, 1938 is a list made by Mr. Booth of replies to 519-C; 520-A is a memorandum
554 from H. B. Benfield to R. S. Booth, prior to May 6, 1938; 520-B is a memorandum of inquiry from R. S. Booth, May 6, 1938; 520-C, dated May 25, 1938, is a list of replies made up by Mr. Booth as he received them to 520-B.

I offer these into evidence as records and admissions of the Respondents.

Trial Examiner Norwood: The hearing will come to order. Are there any objections to the proffer?

Mr. Robison: Mr. Examiner, I object to Exhibit 519-D on the ground that it purports to be a memorandum showing, among other things a certain communication from Youngstown Sheet & Tube Company, as to which it is purely hearsay and incompetent.

I object to 520-C on the same ground, namely, that it purports to be a memorandum, showing, among other things, a reply received from the same Respondent, and the objection is the same, hearsay and incompetent.

Trial Examiner Norwood: Any further objections?

Mr. Robison: In addition to what I have said, it is understood the general objections apply?

555 Trial Examiner Norwood: Yes.

Mr. MacIntyre: Well, I include those in this offer with the others, on the strength of the certification by Mr.

Welch to the effect that they are communications, that they are genuine and authentic documents of what they purport to be, that is, a recap of the replies that Mr. Booth received from the persons named on those lists.

Trial Examiner Norwood: Let me see it.

(Document handed to the Trial Examiner.)

Mr. Robison: In reply to that, Mr. Examiner, I would say that Mr. Welch is entirely without authority to certify to that effect for us and our clients. This is not the sort of a paper that comes under any stipulation made in this case to which we have been a party.

Mr. Welch: Will your Honor please read the certification I made?

Trial Examiner Norwood: Yes.

Mr. Welch: I think it should be. It questions my authority.

Trial Examiner Norwood: Who made the recapitulation? Does it show?

Mr. Welch: It doesn't show. I don't know anything about that.

Mr. MacIntyre: It is certified as a recapitulation which was furnished from the files of and by the client of
556 Mr. Welch, Mr. Robert S. Booth.

Mr. McDaniel: If your Honor please, on behalf of the Respondent, H. G. Morrow, I make the same objection to Exhibit 519-B. Whether there was any correspondence such as this recapitulation purports to be, I do not know. Even if this is a recapitulation which was in the files of the Organization Service Corporation, still it doesn't sufficiently appear that the recapitulation was properly made or made by anyone who was authorized to do it, or that actually the correspondence took place. If there was such correspondence, I think the actual documents should be produced.

Mr. MacIntyre: If your Honor please, we are doing the best we can. We didn't get the correspondence, but we were able to get the recapitulation from Mr. Booth which he made of the correspondence.

It is within the ability and the power of the Respondents to bring that correspondence in, and we would accept it, I am sure, in lieu of the recapitulation, if they would only bring it to us.

Trial Examiner Norwood: Now, this is a memorandum sent out by the Association to the members named here:

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Beacon Electric Supply Company, Washington, D. C. Is that a dealer, the Beacon Electric Supply Company?

Mr. MacIntyre: That was one of the wholesalers
557 about which the inquiry was concerned.

Mr. Austin: If your Honor please, I think if you will read that again, you will find that it was not sent to any dealer distributor.

Trial Examiner Norwood: It was sent to the members respecting this dealer, this wholesaler.

Mr. Austin: I would like the record to show it was not sent to any wholesaler.

Mr. Robison: I do not recall if there is any evidence on the face of the paper showing to whom it was sent, Mr. Examiner.

Mr. McDaniel: That is a one-sheet paper, which has on it what purports to be both an inquiry and a reply. Obviously, the sheet does not contain the actual inquiry or the actual reply, but it purports to be a recapitulation, not the actual documents at all.

Trial Examiner Norwood: On the record.

Who is "R. S. B."?

Mr. MacIntyre: R. S. Booth, one of the Respondents. The certification of Mr. Welch is on the reverse side of the document itself.

558 Trial Examiner Norwood: On the record.

The objection is overruled.

Mr. Robison: May I have an exception?

Trial Examiner Norwood: Yes. All this explanation is with you. Your clients can explain that if that is not true, and tell the whole story.

Mr. Robison: Let me make this picture a little clearer, as I see it. Somebody who has no connection with our client makes a memorandum that our client said something in writing. Now, if there can be any more absolute hearsay than that within the rules of evidence, it is hard for me to conceive it, and it certainly does not come within an exception to the hearsay rule.

Trial Examiner Norwood: In the first place, these were found in the files of the Respondent.

Mr. Robison: Of a Respondent?

Trial Examiner Norwood: Yes, who has the explanation. All your Respondents have the explanation of that, which they are privileged to give. These are the transactions themselves.

Mr. Robison: This memorandum is not a part of any transaction, as I see it.

Trial Examiner Norwood: It appears to be.

Mr. Robison: I beg your pardon?

Trial Examiner Norwood: There are many reasons
559 and I shall overrule the objections and receive them.

Mr. Robison: I assume your ruling is based in part perhaps upon the miscomprehension that our client was a member of this association at the date of this memorandum, which is contrary to the fact and contrary to the showing of the pleadings in this case.

Trial Examiner Norwood: No, I have no misapprehension about the situation.

Proceed.

COMMISSION'S EXHIBITS NOS. 519-A to D and 520-A to C were offered and received in evidence.

Mr. MacIntyre: If your Honor please, I now make reference to documents, Commission's Exhibits 521-A to C for identification, which have been certified to by Mr. Poskanzer as genuine and authentic letters, which they purport on their face to be, certifications appearing on the reverse sides thereof.

First, 521-A, a letter from Baldwin Hall Company, Inc. to Cohoes Rolling Mill Company, June 1, 1938.

521-B, a letter from Cohoes Rolling Mill Company to Baldwin Hall Company, June 7, 1938.

521-C, a letter from Cohoes Rolling Mill Company to Baldwin Hall Company, June 7, 1938.

I offer those in evidence as admissions and records
560 of these Respondents.

Trial Examiner Norwood: On the record.

Are there any objections?

Received as marked.

COMMISSION'S EXHIBITS NOS. 521-A to C, inclusive, were offered and received in evidence.

Mr. MacIntyre: Now, if your Honor please, I refer to Commission's Exhibits, for identification, 522 and 524, which appear to be photostats of the originals, that is, the original documents, of which Commission's Exhibit 521-B and 521-C are typed copies. I ask that they be admitted in substitution form, Commission's Exhibits 521-B and 521-C, and I believe Mr. Poskanzer now is prepared to state that Commission's Exhibits 522 and 524 are photo-

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stats of the genuine, authentic documents of which they purport to be.

Mr. Poskanzer: Commission's Exhibit 522 and 524 are photostats of the original letters of which Commission's Exhibits 521-B and C are typewritten copies.

Mr. MacIntyre: And you certify that the documents are genuine and authentic photostats of which they purport to be photostats.

561 Mr. Poskanzer: I can state on the record that they are photostats, in the same form as the others.

Mr. MacIntyre: So I ask to withdraw Commission's Exhibits 521-B and C, and substitute therefor Commission's Exhibits 522 and 524.

Trial Examiner Norwood: Let the substitution be made.

Mr. MacIntyre: If your Honor please, I now refer to Commission's Exhibits, for identification, 523, photostats of an original letter from John W. Cooper, sales manager of Cohoes Rolling Mill Company, to all distributors of its product, dated July 1, 1938, and it has been certified to as such by Mr. Poskanzer, as is shown on the reverse side thereof.

I offer it as an admission and record of the Respondent.

Trial Examiner Norwood: That is, Commission's Exhibit 523.

Is there any objection?

It is received as marked.

COMMISSION'S EXHIBIT NO. 523 was offered and received in evidence.

Mr. MacIntyre: If your Honor please, I now make reference to Commission's Exhibit, for identification,
562 525, 526, 527, 528, 529, all of which have been certified to by Mr. Peyser as genuine and authentic documents, of which they purport to be on their face, namely, Commission's Exhibit 525, a letter from T. H. Bibber to W. W. Kingsbury of the Austin Company, March 8, 1937; Commission's Exhibit 526, a letter from J. E. MacAuliffe to the M. B. Austin Company, May 25, 1937; Commission's Exhibit 527, letter from M. B. Austin Company, rather a letter from M. B. Austin, president of the M. B. Austin Company to J. E. McAuliffe, of the Triangle Company, of May 27, 1937; Commission's Exhibit 528, letter from M. B. Austin, of the Austin Company, to J. E. McAuliffe of the Triangle Company, June 1, 1937; and Commission's Exhibit 529, letter from A. H. Friend of the M. B. Austin

Company to Miss Gold of the Triangle Conduit & Cable Company, October 13, 1937; and I offer them as such and as admissions and records of the Respondents.

I would like to add to that, these have been certified by Mr. Peyser, and certified to and coming to us from the files and by the M. B. Austin Company.

Trial Examiner Norwood: Is there any objection?

Mr. Stewart: Yes, there will be.

(A short pause.)

Trial Examiner Norwood: Will counsel pass the 563 documents back as they complete their investigation?

Mr. King: I would like the record to show Clayton Mark & Company has no objection, standing or otherwise, to Commission's Exhibit 526.

Mr. Stewart: As to Commission's Exhibit 526, except as to Clayton Mark & Company, the exhibit is objected to for the reason that it shows on its face it is purely a private communication between Mr. McAuliffe and Mr. Austin, and in no sense is part of any of the transaction involved in this case. It contains hearsay and statements of opinions which are in no way binding upon any of these Respondents other than the persons named in the communication.

The same objection is made to Commission's Exhibit 527.

The same objection is made to Commission's Exhibit 528, the three documents showing that the communication was with reference to a purely private transaction concerning the companies involved, and were in no sense a part of any of the matters covered by this complaint.

As to Commission's Exhibit 529, it is objected to for the reason that the document is incomplete on its face and meaningless. If these documents are offered simply as statements of the record and are not to be taken as evi-
564 dence of any facts, that would make a difference in my contention.

Mr. Robison: I want to add to Mr. Stewart's objection, Mr. Examiner, that in so far as the papers now offered contain anything in the nature of admissions, they show on their face that they are not and cannot be admissions in furtherance of any such conspiracy as is alleged in this case.

Mr. MacIntyre: If your Honor please, my reply to that last objection, is just this: that statements such as are contained in these documents, I will admit are difficult to discern as admissions when taken in isolation, but when

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fitted into all the other statements that are made and all the other acts that are committed by these Respondents, they are shown to be admissions as admissions of a plan and design on the part of the Respondents, as charged in the complaint.

Mr. Robison: The point that I make in that connection, Mr. Examiner, is that you cannot show the existence of a conspiracy or the joining in a conspiracy of one alleged co-conspirator by the admissions of another, any more than you can show agency by the admissions of an agent—the two rules run in parallel.

Trial Examiner Norwood: Will you read that statement just made by Mr. Robison, please.

(Statement by Mr. Robison read.)

565 Trial Examiner Norwood: Your contention then that an alleged conspirator does not admit facts which would indicate his connection with the conspiracy?

Mr. Robison: No, no; somebody else's connection with the conspiracy.

Trial Examiner Norwood: They could not by admitting a fact connect themselves with the conspiracy.

Mr. Robison: It is not a matter of connection himself. I have not the least objection, so far as I am concerned, to the parties to this correspondence connecting themselves with some conspiracy, if there was one, but I do object to the proposition of anything they say can be used as evidence that somebody else was a party to the same conspiracy, on the ground I have stated, that while it is true that conspiracy being shown and the parties proceeded against having been shown to be parties to that conspiracy, that admissions by one conspirator in furtherance of the conspiracy, are admissible against all, but that is not this situation.

Trial Examiner Norwood: Well, conspiracy, if it should appear from the whole record, admissions of one may be taken as admissions, and would be considered against the whole.

Mr. Robison: Not, if I may add, not unless they are admissions in furtherance of the conspiracy shown.

566 Now, to apply that thought to this particular transaction, as I understand, the attempt is to show that there was a conspiracy against the maintenance by the manufacturers of warehouse stocks in Chicago, and this is a series of correspondence in which one respondent

requests the respondent from whom he bought his materials to allow him to carry a consigned stock in Chicago; consequently, if there was any such conspiracy as has been referred to, is not in furtherance of that conspiracy, but on the contrary, this designed for the discontinuance of the conspiracy.

Trial Examiner Norwood: I am not sure of that.

567 Mr. MacIntyre: While that might appear at first glance to be a move on the part of someone to discontinue the conspiracy, it is shown, it is taken with the record to be taken otherwise. It goes further. It goes to the purposes and the effects of the conspiracy in itself.

Going back to the case cited on the first day of the hearing concerning admissions where even the man accused, falsely accused someone else of slaying the man, nevertheless, the evidence of his accusation against the other was used against him as an admission.

It shows you how broad the doctrine of admissions happens to be when the statement is made even apparently in the interest of the person making it, unless taken on the face of the entire record to be shown that it is a part of a plan for defending the conspiracy, it is nevertheless an admission within law.

Mr. Stewart: Well, but the point I make, Mr. Examiner, if you will read those letters you will see all they have to do with is a matter between the two persons, and I never heard of any rule which said you would let into evidence, even in a conspiracy case, the expressions of opinions and points of view, of business policy, which could only have to do with the two people involved. That is the point I make. We could not have any control over that, could not be any part of a conspiracy of what they are

568 doing. He is arguing about the whys and wherefores of warehouse stock.

Trial Examiner Norwood: Now, as I see it, this complaint covers the activities of an entire industry here, as to certain matters affecting the prices, and so on, and I think the transactions between others and between them and the association are all relevant and material here when they deal with the subject matter, and there is more involved than just some admission here.

Mr. Stewart: I have no quarrel with that point of view, but what I object to—let me have this one, for example, I will show you what I have specific reference to. Take the second paragraph of this, Commission's Exhibit No.

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526. Now, that is obviously just an expression of opinion on the part of the writer. It could not be anything else; so long as they state facts I have no quarrel, but—

Trial Examiner Norwood: Now, who is the writer there?

Mr. Stewart: Well, that is Mr. McAuliffe, the President of the Triangle. He is writing to Mr. Austin, who is a distributor in Chicago.

Trial Examiner Norwood: Triangle is one of the respondents?

Mr. Stewart: Oh, yes, they are both respondents.

Mr. Austin: May I correct the statement as to
569 distributor in Chicago.

Mr. Stewart: Are they not a distributor?

Mr. Austin: I do not believe so.

Mr. Stewart: Isn't Austin a distributor, Mr. Peyser?

Mr. Austin: They are conduit sellers.

Mr. Stewart: You will see several of those running through every letter. Now, of course, you will bear in mind that the letter from Mr. Austin, in both these—Mr. Austin being dead, we have no chance to find out what he based it on here.

Trial Examiner Norwood: I think it is very clear that you will have to receive these for study.

The objection is overruled. The exhibits are received as marked Commission's Exhibits Nos. 525 to 529 inclusive.

Mr. Robison: I understand your ruling to be, Mr. Examiner, that they are admitted only as evidence against those respondents who may ultimately be shown to be connected with it.

Trial Examiner Norwood: Certainly, yes, sir, that is the point.

Mr. King: I further understand, Mr. Examiner, that they are also admissible to show that certain parties had nothing to do with the conspiracy.

570 Trial Examiner Norwood: Yes, certainly.

Mr. Robison: I said against.

Mr. MacIntyre: I only offered them to show what has taken place. Let the chips fall where they may.

COMMISSION'S EXHIBITS NOS. 525 to 529 were offered and received in evidence.

Trial Examiner Norwood: Proceed.

(Whereupon, at 12:10 p. m. a recess was taken until 1:00 p. m. Eastern Standard Time.)

571 Afternoon Session, 1:15 p. m.

Trial Examiner Norwood: The hearing will come to order.

Mr. MacIntyre: Is there a pending matter?

Trial Examiner Norwood: Nothing pending. 529 was received.

Mr. Austin: 525 to 529 all went in.

Mr. MacIntyre: If your Honor please, I make reference to Commission's Exhibits for identification 530, 531A and B, 530 having been certified as coming from the files —this is a typed copy of a letter coming from the files and furnished by L. R. Quinn, certified to be genuine and authentic, a letter from L. A. Wooley, Inc., to L. R. Quinn, June 7th, 1938, as certified by Mr. Stewart.

531A and B is a letter from L. R. Quinn, Enameled Metals Company, to M. W. Bedient, L. A. Wooley, Inc., dated June 8th, 1938, and certified as such and as coming from the files of and furnished by L. R. Quinn, such certification being made by Mr. Stewart.

I offer those documents in evidence as admissions and as records of the respondents. I believe Mr. Stewart will concede that as to 530 and 531A and B he furnished us these typed copies of other documents which were in the files of Mr. L. R. Quinn.

572 Mr. Stewart: Yes.

Trial Examiner Norwood: Any objection?

Mr. Austin: I would like to file an objection to 531A and B on the ground that it is a letter from Major Quinn to one of the distributors recalling something that happened at Hot Springs, when no proof of the occurrence at Hot Springs had been put into the record. I think that it is incompetent to prove the facts set forth in the letter.

Trial Examiner Norwood: Any further objection? Received and marked. Objection overruled.

COMMISSION'S EXHIBITS NOS. 530, 531-A and B were offered and received in evidence.

Mr. MacIntyre: Now, if your Honor please, I make reference to the following exhibits, which bear on the reverse sides thereof certification by George D. Wick, attorney for respondent Garland Manufacturing Company, that they were produced from the files of and furnished by the Garland Manufacturing Company, and that they are genuine and authentic documents, namely:

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533A as a photostat of the memorandum from Herbert Blake.

533B as a photostat of a memorandum from Herbert Blake.

534 as a photostat of a report by the Rigid Steel
573 Conduit Association.

535 as a memorandum—

Mr. Welch: Tell us the date of that.

Mr. MacIntyre: April 12, 1937.

535 as a photostat of a memorandum from R. M. Garland to Robert Garland dated July 2nd, 1937.

536 as a photostat of a memorandum from R. M. Garland to Robert Garland dated July 8th, 1937.

537 as a photostat of a letter from R. S. Booth to Robert Garland dated September 23rd, 1937.

538A and B as a photostat of a two-page letter from Herbert Blake to the manufacturers of Rigid Steel Conduit, dated September 23rd, 1937.

539 as a photostat of a letter from Leo P. O'Brien to Robert M. Garland dated October 8, 1937.

540 as a photostat of a letter from Oscar F. Lutringer, manager of Lancaster Store to Robert Garland dated October 12, 1937.

541 as a photostat of a letter from Robert Garland to Leo P. O'Brien dated October 13, 1937.

542 as a photostat of a letter from Robert Garland to the Organization Service Corporation dated October 14, 1937.

543 as a photostat of a letter received by Garland Manufacturing Company and which is further specified by
574 Mr. Welch as a letter from R. S. Booth dated October 4, 1937.

544 as a photostat of a letter to Robert Garland and further certified by Mr. Welch as a letter from R. S. Booth dated November 4th, 1937.

545 as a photostat of a letter from Robert Garland to W. A. Leiser & Company, November 22nd, 1937.

546 as a photostat of a letter from R. M. Garland to R. J. Sullivan dated December 3, 1937.

547 as a photostat of a letter from R. J. Selwyn to the Garland Manufacturing Company, attention R. M. Garland, dated December 1, 1937.

548 as a photostat of a letter received by the Garland Manufacturing Company and further certified by Mr.

Welch as a letter written by R. S. Booth dated December 15, 1937.

549 as a photostat of a letter from Robert Garland to the Organization Service Corporation, dated December 16, 1937.

550 as a photostat of a memorandum from R. M. Garland to Robert Garland dated December 24, 1937.

551 as a photostat of a letter received by R. M. Garland and further certified by Mr. Welch as a letter written by R. S. Booth dated December 27, 1937.

552A and B as a photostat of a two-page letter
575 from R. M. Garland to Leo J. O'Brien dated December 31, 1937.

553A and B as a photostat of a letter from Leo P. O'Brien to Robert M. Garland, January 3, 1938.

554 as a photostat of a letter from B. D. Davis to Mr. Garland dated June 1, 1938.

555 as a photostat of a letter from R. M. Garland to Leo P. O'Brien dated June 8, 1938.

556 as a letter from receivers for the Garland Manufacturing Company to its distributor agents, dated June 8th, 1938.

557 as a photostat of a letter from the State Electric Company to Garland Manufacturing Company dated June 10, 1938.

558 as a photostat of the first page of a letter from Leo P. O'Brien to Robert M. Garland, dated June 22nd, 1938.

559, as a photostat of a letter from R. M. Garland to
576 Leo P. O'Brien, dated December 7, 1938.

560, as a photostat of a letter from Shell Electric Supply Corporation, to Garland Manufacturing Company, December 8, 1938.

561, as a photostat of a letter from R. M. Garland to Leo P. O'Brien, March 1, 1939.

562, as a photostat of a letter from D. J. Murray to District Managers and District Representatives, dated May 27, 1940.

563, as a photostat of a letter from D. J. Murray, Sales Manager, Conduit Products Section, to all distributor agents of Rigid Steel Conduit, May 27, 1940.

564, as a photostat of a copy of a letter which was sent to Garland Manufacturing Company by L. R. Quinn, dated May 27, 1940.

Certifications on the reverse side of each of these are

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to the effect of the identification as I have stated. I ask that they be accepted as stated in those certifications by George D. Wick, attorney for Garland Manufacturing Company.

Is there any objection to those identifications?

Mr. Stewart: No objection to the identifications, except I do object to 533-A and 533-B, for the reason that the certification by Mr. Wick goes beyond any author-
577 ity within the scope of the stipulation between counsel for the Respondents and counsel for the Commission, in that on both 533-A and 533-B, Mr. Wick, as counsel, undertakes to certify that the document is a memorandum from Herbert Blake.

Now, I don't mind saying to Mr. MacIntyre, and as well to the Examiner, the reason I am pressing that is that I know that is not true. I know it from Mr. Williams and I know it from Mr. Garland that this is not a memorandum from Mr. Blake; this is a memorandum someone prepared, but up to date we haven't been able to find out who.

If you will look at it, Mr. Examiner, you will see that it bears no internal evidence of having been prepared by anybody. It seems to be a series of notes by someone. I submit that a document as important as that should not be admitted by reason of some lawyer who knows nothing about certifying it was prepared by Mr. Blake, the Respondent.

Mr. MacIntyre: Your only objection to the identification is the fact that Mr. Wick had no authority to make such certifications; is that correct?

Mr. Stewart: Yes, that Mr. Wick has undertaken to testify and you are depriving us of the right of cross-examination as to who prepared the document. If you want to use it as a document from the Garland files,
578 all well and good, but if you want to use it as establishing that Mr. Blake prepared that memorandum, I say that the certification goes beyond the authority of Mr. Wick, and in addition, as I say, I am confident it is not so.

Mr. MacIntyre: Well, I just have this to say about that, Mr. Stewart: I was sitting beside Mr. Wick when he made these certifications.

Mr. Stewart: I know that.

Mr. MacIntyre: He had on the other side of him Mr. Robert Garland and on the back of each of these documents are Mr. Garland's initials.

Mr. Stewart: I know that.

Mr. MacIntyre: In his own handwriting, upon which Mr. Wick based his certifications, and in connection with the statements that Mr. Garland made to him at the time that they were as Mr. Wick certified.

Mr. Stewart: Well, that may well be.

Mr. MacIntyre: So, he wasn't resting upon what he knew, but upon what he and his client, who was a Respondent here, stated that he knew at the time.

Mr. Robison: I take it, Mr. Examiner, that the statement just made by Mr. MacIntyre, is not to be deemed evidence of any sort.

Trial Examiner Norwood: No.

Mr. MacIntyre: Not any more than Mr. Stewart's
579 statement that the certification was untrue.

Trial Examiner Norwood: All right.

Mr. Stewart: I didn't say the certification wasn't true.

Mr. MacIntyre: I beg to differ with you. The record shows that you did say that.

Mr. Stewart: I said that the reason I am objecting to the certification is that I know the fact to be that Mr. Blake did not prepare the memorandum, and the reason I am urging my objection, is that I want Mr. Garland to testify if that be his position, because I think Mr. Blake then has the right to answer, but to let it in this way, we have no way of finding out.

I don't mind saying that Mr. Williams informed me that he inquired of Mr. Garland as to who prepared that memorandum, and Mr. Garland told him he didn't know, but he thought it was Mr. Walker.

Mr. MacIntyre: Well, he told his attorney that Mr. Blake prepared it and based on that, his attorney certified pursuant to our stipulation that Mr. Blake did prepare it.

Mr. Stewart: I know it isn't so.

Mr. Robison: I must except to the statement that any such certification by Mr. Wick is pursuant to any stipulation here. Our stipulation does not go to the
580 extent of stating or permitting an attorney or a Respondent to state by whom some paper was prepared.

Mr. Welch: Now, in behalf of Mr. Blake, I want to object to this under such circumstances.

Trial Examiner Norwood: Well, now, the situation is that one counsel identifies this and other counsel are questioning the correctness of his identification. Is that right?

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Mr. Stewart: No, it isn't that.

Trial Examiner Norwood: Well, identifying it as being prepared by a particular person. Do you controvert the identification of it as coming from the files?

Mr. Stewart: No, that isn't the point that I was trying to make clear, that there is no question about that; we are not disputing that.

Mr. Robison: That much is covered by our stipulation.

Mr. MacIntyre: If your Honor please, a stipulation placed in the record, pages 16 and 21, covers this precisely, and reserves to the Respondents this: that if any one of the Respondents' counsel certify that it was done here, and which they believe to be erroneous, then they have a right, and are not precluded by the stipulation from calling the person who is so certified to have prepared it, and go on the stand and deny it. Then if he does, the cer-
581 tification is killed under the stipulation, and until he does, then the stipulation stands.

Mr. Robison: Mr. Examiner, it is only necessary to say that the record of the stipulation will speak for itself. I take decided exception to Mr. MacIntyre's interpretation.

Trial Examiner Norwood: Rather, there is an issue between counsel of fact. That will be the subject of evidence to be introduced hereafter, I presume.

Mr. Stewart: You see, our difficulty is this—

Trial Examiner Norwood: You take the position that it should not be received unless it be shown to be the document prepared by this Respondent?

Mr. Stewart: No, sir.

Mr. MacIntyre: There is no objection to identification of the others, as we have already stated.

Trial Examiner Norwood: Other than Commission's Exhibit 533-A and B?

Mr. MacIntyre: While they are getting ready to
582 state objections, I would like to ask this, it will relate to documents—

As to these certifications of all these documents in this pending offer, you will admit that they were made by Mr. Wick, subsequent to May 28, 1941.

Mr. Stewart: Whatever the date shows. I have not checked it.

Mr. MacIntyre: They are not dated, but we will concede that such certifications as he has made on these documents, were made subsequent to May 28, 1941.

Mr. Robison: I raise no question to the contrary.

Mr. MacIntyre: I think Mr. Stewart knows it is a fact. I did not go to Mr. Wick's office prior to that time; is that true?

Mr. Stewart: I do not remember the date, but if you say so.

Mr. MacIntyre: It is a question whether it comes under the stipulation or not, whether it was done before or after.

Mr. Stewart. I do not know what you are getting at. Yes, you were there after.

Mr. MacIntyre: That is, certifications were made subsequent to May 28, 1941.

Mr. Welch: I would like to state further objection
583 on the record, that this certification says that the document was prepared by Herbert S. Blake; by admitting the document as a statement made by someone else who prepared it, deprives us of the right of cross-examination to determine that fact, where, if that fact is in issue—as one of the objections to the admission of the document.

Trial Examiner Norwood: I do not think there is much substance in an objection on the ground of lack of cross-examination when the person who has the explanation is your client, or is an employee of yours, within your power to produce him at any time for a full explanation.

Mr. Stewart: May I suggest this: of course, we will be met with the contingency that we put Mr. Garland on the stand and say to him: "Mr. Garland, you appeared to certify that this was prepared by Mr. Blake; is that true?" and the objection is that we could not cross-examine our own witness.

Trial Examiner Norwood: You could not cross-examine your own client anyway, so that does not change your status there; I mean you could not ask him leading questions.

Mr. Stewart: That is a different matter, but to ascertain the truth as to who prepared that document, you
584 would naturally want to cross-examine Mr. Garland, if that goes on in that fashion.

Trial Examiner Norwood: I think you could examine him sufficiently to bring out the facts with respect to it.

Mr. Stewart: Well, if that is the situation, it is not so serious.

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Trial Examiner Norwood: I guarantee that you would have the opportunity.

Mr. Stewart: Thank you.

Trial Examiner Norwood: You will have sufficient latitude.

Mr. Robison: More than that, I might suggest Mr. Garland is not Mr. Stewart's client.

Mr. Austin: What I was going to say: who is cross-examining who, when Mr. Garland is on the stand. He is not my client. I could cross-examine him, couldn't I?

Trial Examiner Norwood: I do not think—there is community of interest, you see, among—

Mr. Austin: I do not see that, sir. I think everybody here would deny that; there are three separate interests.

Trial Examiner Norwood: It is a question of the mental attitude of the witness to the person who is questioning
585 him.

Mr. Austin: Fair enough.

Trial Examiner Norwood: That determines whether or not leading questions may be asked.

Mr. Robison: Do you want this on the record?

Trial Examiner Norwood: Well, I think that is enough. Proceed.

Are there any further objections?

Mr. Stewart: Well, I object to the balance of the documents if they are only offered as communications for what appears on their face, I have no objection, but if they are offered as evidence of facts therein stated, as against the other Respondents, then I object, on the ground that they contain hearsay and conclusions not of matters which are properly admissible as against the other Respondents.

Trial Examiner Norwood: Are there any further objections?

Mr. Robison: I have not seen these yet, Mr. Examiner. They went down the table.

Trial Examiner Norwood: All right.

(There was a short pause.)

Trial Examiner Norwood: Are counsel ready to state objections?

Mr. Robison: I object to the exhibits now offered,
586 namely, Commission's Exhibits Nos. 530 to—

Trial Examiner Norwood: 532.

Mr. Robison: 532—well, whatever the pending exhibits are. According to my notes they are 530—

Trial Examiner Norwood: No, Commission's Exhibits 530 and 531 have already been received.

Mr. Austin: Commission's Exhibit 532 has been withdrawn. Exhibit 533 starts the offer.

Mr. Robison: Commission's Exhibit 533 to 564, inclusive, I object on the ground that they are not evidence and are not admissible against any respondent other than those immediately taking part in the correspondence which these offered exhibits represent, and in particular they are in no respect binding or any evidence against the respondents whom I represent.

Trial Examiner Norwood: Are there any further objections?

Commission's Exhibit 534 to 564, are received in evidence, and the objections are overruled as to Commission's Exhibits 534 to 564, inclusive.

COMMISSION'S EXHIBITS NOS. 534 to 564, inclusive, were offered and received in evidence.

Trial Examiner Norwood: Now, as to Commission's Exhibit 533, the counsel here for the Garland Manufac-
587 turing Company certifies that Commission's Exhibits 533-A and B were prepared or came from memorandum from Herbert Blake. That is there admitted by counsel for the Garland Manufacturing Company, but it is denied by counsel for the other respondents, without deciding whether or not that comes within the purview of the stipulation which Mr. MacIntyre cited here, because I have not studied that stipulation sufficiently to pass on it bodily; without deciding that, I am receiving this in evidence as certified to by Mr. Wick, and also as a document which all of the counsel agree came from the files of the Garland Manufacturing Company.

I suppose that means not to be applied to other respondents here, unless the connection is made in some way, so I shall receive Commission's Exhibits, for identification, 533-A and B, subject to my statement.

COMMISSION'S EXHIBITS NOS. 533-A and B were offered and received in evidence.

588 Trial Examiner Norwood: Proceed.

Mr. MacIntyre: That exception that is made is no different from those that you have been making as to connection on the basis of the entire record and the legal application, is that correct?

Trial Examiner Norwood: Now, counsel may make up his own mind about that.

Mr. MacIntyre: I am just asking for your interpretation of the statement you just made.

Trial Examiner Norwood: I think practically it comes to the same thing, but you may use your own judgment about it. I think so.

Mr. Stewart: Well, may I say—

Trial Examiner Norwood: However, it does leave—

Mr. Stewart: It does not preclude us.

Trial Examiner Norwood: It does leave the other counsel the privilege of showing that the documents were not prepared by Mr. Blake.

Mr. Stewart: That is the point.

Trial Examiner Norwood: Proceed.

Mr. MacIntyre: I do not understand they could have that privilege anyway under any circumstances as something to show that fact.

Trial Examiner Norwood: I think if they had admitted Mr. Blake made it, I think they would be precluded 589 from—

Mr. MacIntyre: Well, I am talking about, if they did admit it, it could not be denied by the admission of someone else.

Trial Examiner Norwood: Proceed.

Mr. MacIntyre: If your Honor please, I now make reference to the following exhibits, Commission's Exhibits for identification and the certificates on the reverse side of each as made by Mr. James M. Houston, attorney for respondent National Electric Products Corporation, to the effect that they were secured from the files of and furnished by that company and that they are authentic and genuine documents as follows:

Commission's Exhibits 565A to C, inclusive, a three-page letter from I. A. Bennett, Vice-President of the National Electric Products Corporation to Mr. Einloth of the same company, dated November 5, 1936;

Commission's Exhibit 566, a memorandum from I. A. Bennett of the same company to C. J. Kim of the same company, dated November 19th, 1936;

Commission's Exhibit 567, a letter of Mr. Bennett of that company, the same company, to Rigid Conduit Jobbers of the products of that company dated November 28, 1936.

Commission's Exhibit 568A and B, which is a letter from Mr. Bennett of the National Electric Products Cor-

590 poration to other employees and officials of that company dated August 11, 1938;

569, a letter from I. A. Bennett of the same company to the factory of the National Electric Products Corporation dated December 6, 1938;

Commission's Exhibit 570, dated December 9, 1938, a letter from J. M. Moore of the National Electric Products Corporation to Mr. W. C. Robinson, Jr. of the same company;

And I offer the same in evidence as documents, thus identifying as admissions and records of the respondent.

591 Mr. Stewart: As to Commission's Exhibits 565-A, B and C, 566, 567, 568-A and B, 569, 570, in so far as these are offered as proof of the truth of the facts stated therein, they are objected to as incompetent, and they are further objected to as being communications entirely within the organization of National Electric Products Corporation; they disclose on their face that they cannot be construed to be in any way in furtherance of the acts alleged in the complaint, and they are therefore incompetent, irrelevant and immaterial.

Trial Examiner Norwood: Are there any further objections?

Is this Commission's Exhibit 533 an inter-office matter?

Mr. Robison: Commission's Exhibit 533 has already been ruled on.

Trial Examiner Norwood: Commission's Exhibit 565?

Mr. Stewart: Yes, that is questionably.

Mr. Houston: That is an inter-office.

Mr. Stewart: In fact, I think all of these are.

Trial Examiner Norwood: What do you want to show by this, Mr. MacIntyre?

A competitor is going out of business and he is sending in a list of competitor's customers, telling him to get

592 that business if he can. Is there anything else to it?

Mr. MacIntyre: If your Honor please, this document shows that American Circular Loom Company, which is referred to therein, is one hundred per cent, or was until the time of its dissolution, which occurred just prior to the writing of this letter, one hundred per cent owned subsidiary of the Respondent, National Electric Products Corporation.

It shows the scope of its operations and of the operations of that subsidiary, when it discontinued business,

and there are more questions going to be raised before this case is closed as to when it did discontinue business, and that letter shows it as an admission of I. A. Bennett, one of the Respondents here, as well as an official of one of the Respondent companies.

Trial Examiner Norwood: Have you any objection to it being admitted for that purpose?

Mr. Stewart: No, not for that purpose, if that is all. In fact, I think the answer shows that.

Mr. MacIntyre: The answer does not show all the facts that are disclosed by that letter concerning American Circular Loom Company.

Mr. Houston: Of course, the American Circular Loom Company is not named as a Respondent in this proceeding.

593 Mr. MacIntyre: Neither are all the agents, officers and employees of the National Electric Products Corporation.

Trial Examiner Norwood: I just do not understand this exhibit, Commission's Exhibit 568-A and B; isn't that a statement from a concern to its own salesmen?

Mr. MacIntyre: To other people. It is a report of I. A. Bennett, one of the Respondents here. His company, the company of which he is a vice president, is also Respondent, to other people in his organization concerning what took place at a meeting from which he had returned, a meeting of his associates who are Respondents here.

It is offered for the admission it contains, as well as the record that it is of a meeting of these Respondents, or concerning a meeting, record concerning a meeting of the Respondents.

As I see it, your Honor, it may not be addressed to anyone; if anyone who attended that meeting that is referred to there jotted down his recollection of what occurred for his own benefit, addressing them to anyone, it would be admissible here as admissions against him and all the others who are in the conspiracy, as well as a record of what took place at the meeting.

Trial Examiner Norwood: Subject to the limitations,
594 Commission's Exhibit 565, the objection is overruled, and the exhibits are received as marked, Commission's Exhibits 565 to 570, inclusive.

COMMISSION'S EXHIBITS NOS. 565 to 570 were offered and received in evidence.

Mr. MacIntyre: If your Honor please, I now refer to Commission's Exhibit, for identification, 571, certified to by Mr. Houston, attorney for the National Electric Products Corporation, that it is a document from the files of, and furnished by that company and is a genuine and authentic document, in the form of a letter from H. J. Morrow, temporary chairman, Rigid Steel Conduit Industry, dated May 29, 1939, and reporting or recording certain matters on the meeting of members of the Industry.

Mr. Austin: To whom?

Mr. MacIntyre: It is unaddressed.

Mr. Stewart: It is a bulletin to the Rigid Steel Conduit Industry.

Mr. MacIntyre: The certifications to which I have referred are on the reverse side of that document.

I would like this statement on the record: while I am not making reference in each instance to these certifications as having been made since May 28, 1941, I believe it is conceded by all counsel for Respondents that certifi-
595 cations have been made since that date. I think it would take too much time and space on the record.

Mr. Robison: It may be so understood, unless a question concerning it is raised on the record.

Mr. MacIntyre: That is as to the date on which it was done.

Mr. Robison: Yes.

Trial Examiner Norwood: Is there any objection?

Mr. Austin: I would like to look these over, if you don't mind, your Honor.

Trial Examiner Norwood: All right.

(There was a short pause.)

Trial Examiner Norwood: Are there any further objections?

Mr. Poskanzer: I wish to add an additional objection to the general objection.

Mr. Stewart: There isn't any objection as yet.

Mr. Poskanzer: I wish to object on the ground that at the date of this communication, the Cohoes Rolling Mills Company was not a member of the Rigid Steel Conduit Association.

Trial Examiner Norwood: Is there any further objection?

The exhibit is received, as marked. The objection
596 is overruled.

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COMMISSION'S EXHIBIT NO. 571 was offered and received in evidence.

597 Mr. MacIntyre: your Honor please, I now make reference to certifications on the reverse side of Commission's Exhibits 572 and 573 as made by attorney A. J. Gentholts, attorney for the respondents Republic Steel Corporation, Steel and Tube, Inc., and Fretz-Moon Tube Company, certifying the genuineness and authenticity of 572 as a letter from H. H. Benfield, manager of Conduit Sales, Steel and Tubes, Inc., to J. M. Barton, President, Fretz-Moon Tube Company, dated December 30, 1938, and 573 as Mr. Barton's reply thereto under date of January 3, 1939.

I offer those as admissions and records of these respondents, and particularly for the purpose of showing the purpose on the part of these respondents in accomplishing the matters charged under the complaint.

Mr. Welch: I think we have a clear understanding that we do not have to raise objections each time when our contention is that we were not members of the association or parties to it at the time of the particular document that has been offered.

Trial Examiner Norwood: That is the understanding.

Mr. Stewart: These documents are objected to for the reason that they show on their face, these being Exhibits 572 and 573, that they are inter-office communications; that they contain a discussion of a projected plan which is ob-

viously only concerning the particular companies in-

598 volved, and for the further reason that the documents show on their face that it was simply a discussion and there is no offer to prove that the plan as suggested in the documents was ever carried out and made known to any of the other respondents. Hence nothing therein could in any way be binding on any of the other respondents than those involved in the documents, and they could not in any theory be construed as being in furtherance of any plan or conspiracy alleged in the complaint.

I wish you would look at these, sir.

(Document handed to Trial Examiner.)

Mr. Stewart: May I, Mr. Examiner, in further elaboration of my objection, point out to you that the record shows that Steel and Tubes was the selling agent for Fretz-Moon, so that this communication is solely and simply an inter-company and not an inter-office communication.

Trial Examiner Norwood: Are there any further objections?

Mr. Austin: If your Honor please, I have no additional objection to Mr. Steward, but I would like to make the comment for the record that I fail to see how these documents show any purpose on the part of anybody. They were offered to show purpose on the part of all the respondents. A plan is suggested, and a reply comes, "I will talk to you about it". If that shows purpose,
599 you could put it in your breakfast food and eat it.

Trial Examiner Norwood: I shall examine it before ruling.

Mr. Stewart: That is Benfield of the Fretz-Moon writing to Mr. Barton.

Trial Examiner Norwood: Of his own company?

Mr. Stewart: That is right.

Trial Examiner Norwood: Yes, but it proposes a policy for all manufacturers and action is suggested in order to prevent one manufacturer from quoting under the price of the other manufacturers. The device is suggested here in order to induce all manufacturers to hold their price up to their announced price until new announcements have been put out.

Now, if the Commission has any evidence that such is elsewhere thereafter accomplished, I think that this would be worthy of consideration.

Mr. Austin: If your Honor please, Mr. MacIntyre had offered these as admissions on the part of the persons writing the documents, and as admissions or the part of any other respondent with whom those documents or the plan should be subsequently connected, and, if so, that would be one thing, but he offered those and his specific language was to show the purpose of all these respondents. That is not shown in these documents.

600 Trial Examiner Norwood: He offers to show the purpose.

Mr. Austin: He says those—

Trial Examiner Norwood: (Continuing.) Behind this suggested plan, the purpose of introducing the maintenance of the published price until new prices are published. What do you propose to connect this up with?

Mr. MacIntyre: If your Honor please, I offered those generally as admissions and records and particularly as to the showing of purpose that was made on the face of

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them. The purpose is to see that these prices are maintained not only by the conduit sellers, but as is shown there, the purpose is to see that even the jobbers, wholesalers, resellers maintain the prices, and it is our contention that we have added to the record and will add more to the record in the form of evidence that these respondents have followed such plans as theirs to promote maintenance of prices among themselves in accordance with price cards, and among those re-sellers to whom they re-sold.

Trial Examiner Norwood: And has the evidence that you have put in or propose to put in a bearing at all on these desired results here, whether or not they were ever brought about?

Mr. MacIntyre: We put in some evidence, your Honor, yesterday that shows that those results were being
601 brought about and brought about collectively by these respondents. In fact, I have been putting in evidence since the first day of the hearing in the form of some evidence showing that that was what they were striving for all the while. These common consigned stock agreements are designed for that, and they were put in yesterday, and they show—

Trial Examiner Norwood: I shall receive it subject to that connection appearing. The objection is overruled.

COMMISSION'S EXHIBITS NOS. 572 and 573 were offered and received in evidence.

Mr. MacIntyre: Now, if your Honor please, I make reference to Commission's Exhibits for identification 574A and B, 575 and 576A to E, as documents certified to by Mr. Welch, attorney for Herbert F. Blake, Robert S. Booth, Organization Service Corporation, and others to the effect that 574A and B is a letter from Herbert F. Blake to the members of the Rigid Steel Conduit Association dated November 30, 1936; 575 is a letter from Herbert F. Blake to the members of the industry dated December 1, 1936; and a five page letter from Herbert F. Blake, to I. A. Bennett, another respondent, dated December 23rd, 1938.

I offer those as admissions and as records of these respondents generally, and I also offer them for the
602 particular showing of purpose on the part of these respondents that they disclose in accomplishing the designs and plans which we have shown and are continuing

to show have been adopted and carried out by these respondents in maintaining prices among themselves and among the fellows to whom they re-sell, or among those who re-sell their products.

603 Mr. Stewart: Gentlemen, as to Exhibit 576-A to E, it is objected to on the ground that the communication shows on its face that it is purely a personal communication between Mr. Blake and Bennett, and whatever his status is it is in no way an admission or in any way binding on any of the Respondents here, other than the Respondent Blake.

Mr. Houston: Mr. Examiner, I would like to state a further objection on behalf of Mr. Bennett, that this is a privilege communication between Mr. Blake, an attorney, as the letterhead shows on its face, and Mr. Bennett, the client, and Mr. Bennett will not waive the privilege of having that kept confidential.

Trial Examiner Norwood: Where did this come from?

Mr. Stewart: From Mr. Bennett's files.

Mr. MacIntyre: It came from Mr. Bennett's files. As to that last objection, if your Honor please, I just want to make this observation: when an attorney-at-law becomes the manager, director, advisor and operator of trade associations and of trade groups, such as Mr. Blake did in this instance, through his corporate set-up, the Organization Service Corporation, in showing them how, and aiding them in accomplishing trade restraints, as he is charged in the complaint that he did in this case, then as to such activities, and as to anything concern-

604 ing his activities in that direction, there can be no privilege as between attorney and client, because he has dropped his mantle as attorney-at-law, and he has assumed the status then as a trade association executive. That is the status of Mr. Blake in this instance.

Mr. Stewart: Well, the letter shows on its face it is purely a personal letter.

Trial Examiner Norwood: Was this circulated to anybody else?

Mr. Houston: No, sir, that was written to Mr. Bennett in Florida, if you will notice.

Mr. Stewart: You will notice that it is a personal communication between the two.

Mr. Houston: Contrasted, sir, with this letter marked Commission's Exhibit 575, which is a communication

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apparently by Mr. Blake, and in something more than his capacity as an attorney.

Trial Examiner Norwood: These are some of the same proffer?

Mr. Houston: Yes, sir, I think they are.

Trial Examiner Norwood: I would like to reserve the ruling on this until I read this paper and see its tenor.

Mr. Stewart: I think you should read it.

Trial Examiner Norwood: That is rather a fine point there, I think.

605 Mr. Robison: I want to add an objection on behalf of Youngstown Sheet & Tube Company, that the papers offered are written by a Mr. Blake, with whom the Youngstown Sheet & Tube Company has never at any time any association or connection; entirely incompetent for any purpose.

Mr. Stewart: Well, of course, Cohoes was out of the Association at that time, December, 1938.

Mr. Poskanzer: At the time and date of that letter, Cohoes Rolling Mill Company was not a member of the Rigid Conduit Association.

Trial Examiner Norwood: Now, do you consent that comes within the privilege—

Mr. Houston: (Interrupting.) Well, sir, my point is that this does contain advice as to the law and of necessity such a law is bound to state certain facts, and it is my contention that the whole letter is privileged.

Trial Examiner Norwood: Well, I shall retain the entire proffer here, and rule on it later.

Mr. Stewart: The point of my objection is that it is purely a personal communication between the two and could not be in any way construed as being any act in furtherance of anything alleged in the complaint.

Trial Examiner Norwood: Proceed.

Mr. MacIntyre: I don't believe it is necessary for me to say more about it than I have.

605 Mr. Stewart: I don't think so.

Trial Examiner Norwood: On the record. Proceed, Mr. MacIntyre, with your other proffers. Ruling reserved until tomorrow.

Mr. MacIntyre: How late do you propose to run this evening?

Trial Examiner Norwood: I will follow the wishes of counsel. I think we should get through with those papers.

I don't see why you can't describe the whole list and let us consider them overnight.

Mr. MacIntyre: Well, I can say this: if we can run forty-five minutes, I can take up everything else that I have to take up this afternoon. I would like to clear it out of the way before beginning with witnesses tomorrow morning.

Mr. Stewart: So would we.

Trial Examiner Norwood: Go right ahead.

Mr. MacIntyre: I don't like witnesses to be on the stand while we are discussing these papers and delaying them while they could be at their other business.

Trial Examiner Norwood: Go ahead.

Mr. MacIntyre: If your Honor please, I now make reference to documents marked for identification as
607 Commission's Exhibits 577-A and B, 578-A and B, 579, 580-A and B, 581-A and B, 582-A and B, 583-A and B, 584, 585-A and B, 586, 587-A and B, 588, 589, 590-A to D, inclusive, 591A to D, 592-A and B, 593-A and B, 594, 595, 596-A and B, 597-A and B, 598, 599-A and B, 600-A and B, 601, 602, 603, 604, 605, 606, 607-A to D, 608, 609, 610, 611-A to E, inclusive, 612, 613-A to D, 614, 615-A to C, 616, 617, 618-A and B, 619, all of which except 607-A to D, 608, 609, 610 and 611-A to E, inclusive, have been certified to by Mr. Houston, counsel for Respondent, National Electric Products Corporation, as is shown by the certifications on the reverse side of each, that they came from the files of and were furnished by the National Electric Products Corporation;

That they are genuine, authentic documents as they purport to be on their faces, and I will ask that counsel now concede on the record the identification in that direction.

Mr. Stewart: That is conceded.

Mr. MacIntyre: And I will now ask Mr. Houston as to 607-A to D, 608, 609, 610 and 611-A to E. Do you concede that they are genuine and authentic documents between—that is, communications between the parties purporting to have handled them?

Mr. Houston: I am very sorry I can't identify these as anything I have seen. Some of them are typed
608 copies of letters that I have never seen before, sir, and I don't even recognize the names of the persons signing them, as to some of them.

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I must confess I recognize the stationery of National Electric Products Corporation on more than one; in fact, two of them.

Mr. MacIntyre: Well, Mr. Houston, as to Commission's Exhibits, for identification, 607-A to 611-E, then you don't feel that you can concede the authenticity of those?

Mr. Houston: No.

Mr. MacIntyre: But you don't question those others?

Mr. Houston: Not for my signature, no.

Mr. MacIntyre: Then I may offer into evidence all of the others, except 607-A to 611-E, offer them in evidence as admissions, writings and records of these Respondents, and as explanations of the writings, admissions and records of these Respondents?

609 Mr. MacIntyre: If your Honor please, I would like to make this further statement in connection with the offer that I made on the pending exhibits, that is, that they are further offered as communications between these parties which they purport to have passed between as shown on the face of each and in the certifications of Mr. Houston on the reverse side of each.

Trial Examiner Norwood: Are counsel ready to state their objections?

Mr. Stewart: Well, I shall start, Mr. Examiner, with the exhibits I now have before me.

To Commission's Exhibit 577-A, which on its face purports to be a copy of personal communications of Mr. H. G. Morrow, Central Tube Company, and Mr. H. S. Walker, that is objected to if it is offered for the purpose of establishing the truth of the facts therein stated, for the reason that the document shows on its face that it contains considerable hearsay, in so far as the Respondents are concerned.

As to Commission's Exhibit 575-A and B the document shows on its face that it is an inter-office letter and in no sense a communication which could be attributed to any of the Respondents or binding on them.

610 The same objection is made as to Commission's Exhibit 579. The same objection as to Commission's Exhibits 580-A and B.

The same objection as to Commission's Exhibits 581-A and B. The same objection as to Commission's Exhibits 582-A and B.

The same objection as to Commission's Exhibits 583, 584 and 585-A and B.

The same objection as to Commission's Exhibit 586.

The same objection as to Commission's Exhibits 587-A and B.

The same objection as to Commission's Exhibit 588.

The same objection as to Commission's Exhibit 589.

The same objection as to Commission's Exhibits 590-A and B.

The same objection as to Commission's Exhibits 591-A, B, C and D.

The same objection as to Commission's Exhibits 592-A and B.

The same objection as to Commission's Exhibits 593-A and B, which is simply an inter-office communication and obviously contains hearsay.

There is no objection to Commission's Exhibit 611 594.

Commission's Exhibit No. 595 is nothing but an inter-office communication involving a regulation of the business of the one particular company.

Commission's Exhibit 596-A and B, is another inter-office communication involving the internal affairs solely of the particular Respondent, and is incompetent, irrelevant and immaterial as to any issue in this case.

Commission's Exhibits 597-A and B is a communication between the particular Respondent and one of its distributors, Lappin Electric Company, and involves solely the internal matters between the two, and is in no sense evidence in the case at bar.

Commission's Exhibit 598 relates solely to couplings. As this is not involved in this case, it is objected to as immaterial.

As to Commission's Exhibits 599-A and B, it is objected to as being solely an inter-company communication and relating solely to the internal affairs of the company, and its customers, and in no way is material in the case at bar.

The same is true as to Commission's Exhibits 600-A and B.

The same objection as to Commission's Exhibit 601.

612 As to Commission's Exhibit 602, the matter relates solely to cable which is not involved in the case at bar, and the document is therefore immaterial.

No objection as to Commission's Exhibits 603, 604 and 605.

As to Commission's Exhibit 606, this again is solely a communication with reference to the internal affairs and methods of doing business of National Electric Products and in no way is it binding or admissible as against the other Respondents.

Commission's Exhibits 612 and 613-A, B, C and D, are objected to for the reason that they are again simply inter-company communications relating solely to the private affairs of the company and in no way material in the present inquiry, nor are they competent.

Commission's Exhibit 614 is objected to as incompetent, irrelevant and immaterial, as not establishing any facts material to the inquiry.

Commission's Exhibits 615-A, B and C, is again an inter-company communication, relating solely to the internal affairs of the Respondent involved, and in addition refers to communications sent out by "Our competitors to all of their sales agents, distributor agents and wholesale customers," and as these documents are not included in the offer, the exhibit now offered is incompetent,
613 irrelevant and immaterial, as not being complete.

As to Commission's Exhibit 616, it is objected to as not being a communication of any of the Respondents, showing on its face it is a communication from I. A. Bennett & Company, of Chicago, Illinois, therefore, it is not binding on any of the Respondents here.

Trial Examiner Norwood: What are they; electrical dealers?

Mr. Houston: Yes, sir. They are distributor agents.

Mr. Austin: They are not members of the Respondent, Wholesalers Association.

Mr. MacIntyre: What is the number of that?

Mr. Robison: That was Commission's Exhibit 616.

Mr. Stewart: Commission's Exhibit 617 is objected to for the reason that it refers to an enclosure, and the enclosure not being attached, the exhibit is utterly meaningless.

Commission's Exhibit 618-A and B, which does not appear to have been addressed to anybody, although it appears to have been signed by Mr. Bennett of
614 National Electric Products—I amend my remark by saying that in the light of a certificate of Mr. Houston,

which states that the letter was sent to so-called distributor agents, I object on the ground that the communication being one solely between the company and its distributor agents on internal matters, is incompetent, irrelevant and immaterial to any issue in this case.

The same objection is made as to Commission's Exhibit 619.

619 Mr. MacIntyre: If your Honor please, I now make reference to Commission's Exhibits for identification 620, 621, 622A and B, and 625, and to the certifications on the reverse side of each as made by Mr. A. J. Gentholts, attorney for Republic Steel Corporation, Fretz-Moon Tube Company, and Steel and Tubes, Inc., to the effect that 620, 621, 622A and B were produced from the files of and furnished by the Fretz-Moon Tube Company; that they are: As to 620 a genuine authentic letter received by the Fretz-
620 Moon Tube Company; as to 621, a copy of a letter from J. M. Barton; and as to 622A and B, copy of a letter from H. H. Benfield; as to 625, an authentic and genuine document in the form of a letter from H. H. Benfield, manager of Conduit Sales of Steel and Tubes Division of the Republic Steel Corporation to all wholesalers of Fretz-Moon conduit products, dated November 6th, 1939. I ask counsel for the respondents here if they will concede the genuineness of those certifications.

Mr. Robison: I submit, in view of the understanding we have had there is no further concession necessary regarding any such papers which have been signed on the back and certified by any of these counsel, and a specific objection made.

Trial Examiner Norwood: I think counsel's point is well taken.

Mr. MacIntyre: I offer now, if your Honor please, into evidence Commission's Exhibits for identification 620, 621, 622A and B, and 625 as admissions, as records, and as the communications of these respondents going to the issues involved in this complaint.

621 Trial Examiner Norwood: Gentlemen, please come to order.

Counsel may note that I am retaining for study Commission's Exhibit, for identification, 574-A and B, 575, 576-A to E, and also 577 to 606, inclusive, and 612 to 619, inclusive.

Is counsel ready to state their objections, if any?

Mr. Stewart: What are the last ones?

Trial Examiner Norwood: To Commission's Exhibits 620, 621, 622 and 625.

Is there any objection to the proffer?

Mr. Robison: On behalf of Youngstown Sheet & Tube Company, Commission's Exhibits 620, 621, 622-A and B, and 625, inclusive, just the standing objection. They have no reference to or bearing upon the Youngstown company and therefore are incompetent as to it.

Trial Examiner Norwood: Is there any further objection?

The objection is overruled.

The exhibits are received and marked, Commission's Exhibits 620, 621, 622-A and B, and 625.

COMMISSION'S EXHIBITS NOS. 620, 621, 622-A and B, and 625, inclusive, were offered and received in 622 evidence.

(Thereupon at 4:40 o'clock P. M. September 25, 1941, the hearing was adjourned.)

625 PROCEEDINGS.

Trial Examiner Norwood: The hearing will come to order. Pursuant to adjournment on yesterday, the hearing of Docket 4452 is reconvened at 9 o'clock A. M. Eastern Standard Time, September 26, 1941, in Parlor C, on the 22nd floor of the Hotel Abbey, New York, New York.

Are counsel ready to hand in any corrections?

Mr. Robison: I am not prepared with any corrections.

Trial Examiner Norwood: You can hand them in at any time.

The proffer by the Commission of Exhibits 574 to 576-E, inclusive, on which the ruling was reserved, I shall overrule the objection and receive them in evidence.

COMMISSION'S EXHIBITS 574 to 576-E, inclusive, were offered and received in evidence.

Trial Examiner Norwood: In the matter of Commission's Exhibits, for identification, 577 to 606, there appears to be a repetition there between 591-C and D, and 592-A and B. They seem to be duplicates.

Mr. MacIntyre: If your Honor please, if counsel for Respondents are now willing to concede that the document referred to as 591A and B, is 591-C and D, and a

duplicate of 592-A and B, then I will be willing to with-
626 draw my offer of 591-C and D, because it is an enclo-
sure, as I see it, to salesmen and sales officers of the National Electric Products Corporation, telling them that they were at that time addressing such a letter to the jobbers who were handling the products of that company.

592-A and B is such a letter addressed to such jobbers.

Trial Examiner Norwood: It identifies the material that was sent out?

Mr. MacIntyre: Yes, it does that, and if we get the concession, it is not necessary to duplicate the record on it.

Mr. Robison: I am prepared to make the concession that the papers referred to are duplicates, one of the other.

Mr. MacIntyre: Does Mr. Houston join in that concession?

Mr. Houston: Yes, sir.

Mr. MacIntyre: I withdraw 591-C and D, then, your Honor.

Trial Examiner Norwood: I will say that I have carefully read these and considered the objections. I am quite positive that they should come in for study and they are relevant material, so the objection is overruled and the
following exhibits are received in evidence: 577 to
627 606, inclusive, 612 to 619, inclusive.

COMMISSIONS EXHIBITS 577 to 606, and 612 to 619,, inclusive, were offered and received in evidence.

Trial Examiner Norwood: Proceed.

Mr. MacIntyre: We will call, at the instance of the Commission, as a witness, Mr. Robert S. Booth.

ROBERT S. BOOTH was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Mr. MacIntyre: Does the reporter have the witness' name?

The Witness: Robert S. Booth.

Direct Examination by Mr. MacIntyre.

Q. Will you please state for the record, Mr. Booth, the nature of your business and occupation?

A. I am connected with Organization Service Corpo-

ration and serve as secretary of some trade associations operating under their direction.

Q. How long have you been so engaged?

A. Since 1933.

Q. Are you also an attorney?

A. No, sir.

628 Q. Have you had training in law?

A. No, sir.

Q. Have you had any experience as a trade association executive prior to 1933?

A. No, sir.

Q. Have you been constantly with Mr. Blake in this position since 1933?

A. That is right, sir.

Q. Tell us briefly the nature of the organization of Organization Service Corporation?

A. What do you mean; its personnel?

Q. Whether or not it is a New York corporation, when it received its charter, and what you know about it.

A. It is a New York Corporation. I don't know anything about its affairs, I am only an employee.

Q. You don't know when it was incorporated?

A. No, sir.

Q. Do you know whether or not it was incorporated as early as 1933?

A. I could not say, sir; I don't know.

629 Q. Has it changed its style or name, Organization Service Corporation, in that time?

A. No, sir.

Q. Who have in addition to you directed its affairs since 1933?

A. Well, I have not directed its affairs. I am an employee of it.

Q. Did I understand you to say you are Secretary?

A. No, I am not Secretary of the Corporation.

Q. What is the style of your position with the Organization Service Corporation?

A. An employee.

Q. Is that the designation of your job?

A. Yes, sir.

Q. Well, to your knowledge, who are the officers of the Organization Service Corporation?

A. Mr. Herbert S. Blake, Senior.

Q. Naming the positions?

A. He is the President. Thomas B. Jordan, Vice-President, N. Myles Brown, Vice-President, Paul Weiss, Treasurer, and C. C. Gregory, Secretary. Those are the last officers I know of. I do not know whether there have been any changes or not.

Q. How long have those gentlemen held those respective positions?

630 A. With the exception of Mr. Brown, they were all officers, I believe, when I came there in 1933.

Q. And they have since remained so?

A. As far as I know, yes, sir.

Q. And when did Mr. Brown come into his position?

A. Possibly 1935 or 1936, I do not know definitely.

Q. And has continued in that position since that date?

A. As far as I know, yes, sir.

Q. Well, you are still connected with the Corporation?

A. I am employed by them, yes, sir.

Q. Have you told us the nature of the business of the Corporation?

Mr. Stewart: Now, I submit, Mr. Examiner, that is not the way to prove this fact. Let us get the records, if you want to do this, if you want to prove what the nature of the business is and who the officers are. This man does not know. He says he is an employee, not even an officer and the testimony he gives is very inconclusive. He does not know.

Trial Examiner Norwood: I do not see the slightest objection to his getting what information he can out of this witness as to any of the corporations of this Service Corporation.

Mr. Stewart: Well, the point is, though, it seems to me, if you want to prove that fact, the best way to

631 prove it is to get the records; then we do not have any doubt about what it is.

Trial Examiner Norwood: I suppose these matters could be shown here orally.

The objection is overruled.

The Witness: What was the question.

Mr. MacIntyre: Will you read the question, please?

Trial Examiner Norwood: Read the question.

(Question read.)

The Witness: Have I told you the nature of it?

Trial Examiner Norwood: Yes?

The Witness: No, I have not, because I have not been asked, but I am perfectly willing to.

By Mr. MacIntyre:

Q. All right. Please tell us as briefly as you can the nature of the business of the Organization Service Corporation, as you know it.

A. The Organization Service Corporation act as managers of a number of trade associations.

Q. Name as many of those as you can.

A. Electric Overhead Crane; Formed Steel Tube; Seamless Steel Tube; Tubular Plumbing Goods.

632 The Witness: I do not know that I can enumerate them all. I would have to stop and think as I am now, to tell you the names of them. I will go on if you want me to, to the best of my knowledge.

Mr. Stewart: Go ahead.

By Mr. MacIntyre:

Q. Has that list included—let me cut in short, if I can—has that list included the Rigid Steel Conduit Association?

A. It did when they were in our office. They have not been in our office since 1938—the end of 1938 and the early part of 1939.

Q. When did the Organization Service Corporation first have anything to do with the Rigid Steel Conduit Association?

A. November 1st, 1937.

Q. Are you sure of that date, Mr. Booth?

A. I am not sure.

Mr. Stewart: Well, now that is it. Go ahead.

The Witness: 1936, I think.

By Mr. MacIntyre:

Q. You think it was November 1st, 1936, to and including what date?

A. The contract was up on the 30th of—or the last
632-A of October in 1938, and then until about the 1st of March, 1939 we carried on just as a skeleton.

Q. Still retaining the connection, however?

Mr. Stewart: Now, I object to that.

The Witness: On an entirely different basis.

Mr. Stewart: Just a moment, Mr. Booth.

Trial Examiner Norwood: Wait a minute.

Mr. Stewart: Yes. If Mr. MacIntyre wants to testify, that is another matter, but the witness is, and I suggest he stop leading him.

Trial Examiner Norwood: The point is well taken.

Mr. MacIntyre: If your Honor please, this is one of the respondents that I am attempting to examine, and it is my thought that anything that I can get from him that will give us the facts in the way of testimony, even though it is necessary to probe his mind and memory to get it, that I am entitled to, under the circumstances.

Trial Examiner Norwood: I shall permit you to do that if it appears necessary, but I think this witness has shown a disposition to tell what he knows about it.

Mr. MacIntyre: I do not have any question on that score. It is a matter of attempting to probe his memory.

Trial Examiner Norwood: Well, you may do that if it appears necessary. I do not think it is just in this
633 instance.

Read the last question.

(Question read.)

The Witness: Yes, on a modified basis.

By Mr. MacIntyre:

Q. Until what date?

A. I would say March, 1939.

635 By Mr. MacIntyre:

Q. Mr. Booth: You testified that the Organization Service Corporation has directed the activities of a number of trade associations including the Rigid Steel Conduit Association.

Now, please tell us just what the Organization Service Corporation did to this number of trade associations, including the Rigid Steel Conduit Association.

Mr. Stewart: I object to any testimony regarding the services or the activities of the Organization Service Corporation as to any trade association other than the one involved in this case, as incompetent, irrelevant and immaterial.

Trial Examiner Norwood: Read the question.

(Last question read.)

By Mr. MacIntyre:

Q. I will limit the application of that question to the Rigid Steel Conduit Association.

Mr. Stewart: I withdraw the objection then.
Trial Examiner Norwood: Answer the question.

By Mr. MacIntyre:

Q. Please answer the question.
Mr. MacIntyre: Will you please read the question to the witness?
(Question read.)
636 Mr. Robison: Qualified by a further statement to the application of that question.
Trial Examiner Norwood: Just answer with respect to the Rigid Steel Conduit Association; what did they do for them.
A. It developed a distributor agency agreement, a specific building job contract form, initiated a statistical reporting plan; it investigated specific building job contracts to determine their validity; investigated past transactions.
Trial Examiner Norwood: Past transactions of whom, and what?
The Witness: Of a piece of business, on inquiry.
Mr. MacIntyre: I did not get the witness' last answer.
Trial Examiner Norwood: Read it.
(Answer read.)
Trial Examiner Norwood: Proceed.
The Witness: It disseminated information which it thought would be of assistance to the members on legislative action, caused to be held meetings of the institute or the Association, rather, I should say, and published to its members minute record of such meetings.

By Mr. MacIntyre:

Q. Does that complete your answer, Mr. Booth?
A. I think that embraces our functions; yes, sir.
637 Q. You cannot recall anything else at the moment?
Trial Examiner Norwood: Did they furnish legal services of any kind?
The Witness: Not as a corporation; no, sir.

By Mr. MacIntyre:

Q. Now, you included in that statement you just made, Mr. Booth, the Organization Service Corporation caused to be held meetings of members of the Association and publication of records of such meetings which you distributed to the members?
A. Yes, sir.

Q. Those records of such meetings were, for the most part, made up by you, weren't they?

A. I wrote the minutes; yes, sir.

Q. You recorded those meetings just as you heard and saw them?

A. Yes, sir.

Q. When you were in attendance?

A. Yes, sir.

Q. Listing the members present?

A. Yes, sir.

Q. And others present?

A. Yes, sir.

Q. And all who participated in them?

A. That is right.

638 Q. Mr. Booth, I show you Commission's Exhibit 8-C, which has been identified here as coming from the files of the Rigid Steel Conduit Association.

Will you please tell us if you recognize those, and if so, as what?

A. I was not present at that meeting and did not write the minutes.

Q. You do not know anything about the meeting held?

A. No, sir.

Trial Examiner Norwood: Do you recognize them as the minutes?

The Witness: They are in the same form as minutes which we published when I did have something to do with it.

By Mr. MacIntyre:

Q. Once you did take charge, you published minutes in this form?

A. I was not identified with it at that date, sir.

Q. Mr. Booth, I show you Commission's exhibits which have been identified as coming from the files of the Rigid Steel Conduit Association: 656, 657, 658 and 659.

Will you please tell us whether you recognize those, and if so, as what?

A. Do you want me to identify each individual one?

Q. Yes, each, individually.

639 A. 656 is a copy of minutes of a meeting held November 12, 1936.

Q. Of the Rigid Steel Conduit Association?

A. That is right, sir. 657 is a copy of the minutes of

a Board of Directors' meeting held December 29, 1936. 658 is a copy of a meeting of the Rigid Steel Conduit Association minutes held June 14, 1938. 659 is a copy of minutes of a meeting of the Rigid Steel Conduit Association held October 11, 1938.

Q. Mr. Booth, you have told us that Organization Service Corporation developed consigned stock agreement forms for the members of the Rigid Steel Conduit Association. Do you recall?

A. Yes, sir.

Q. I now show you Commission's Exhibit, for identification, 664 and ask you to state whether or not you recognize that as a duplicate of one of the forms developed by Organization Service Corporation for the Rigid Steel Conduit Association?

A. The form appears to be the same as was developed in our office. I don't think it is a correct answer that it was for the Association. It was done and submitted to the manufacturers for their acceptance and use, or not, as they saw fit.

Q. Who paid you for doing that; that is, who paid 640 the Organization Service Corporation for doing that?

A. The members of the Association, sir.

Q. Through what medium?

A. Through an assessment system which paid the cost of operation.

Q. And it was collected through the office of the Rigid Steel Conduit Association?

A. No, sir; through the Organization Service Corporation.

Q. In connection with its work for the Rigid Steel Conduit Association?

A. That is correct.

Trial Examiner Norwood: Who told you to get it up?

The Witness: You mean what individual?

Trial Examiner Norwood: What individual or organization, whether an association or these individual members of the industry, or who?

Mr. Stewart: That, of course, assumes that he knows.

Trial Examiner Norwood: Yes.

The Witness: I don't know definitely, sir, just who. I know how it came about.

Trial Examiner Norwood: How did it come about?

The Witness: How did it come about?

Trial Examiner Norwood: Yes.

641 The Witness: Some one of the manufacturers—and I can't truthfully say who, because I don't honestly know—in discussion of the organization as it was being formed under Organization Service Corporation, indicated that this company had no consigned stock agreement, which it has often been called, and suggested to Mr. Blake that one be prepared and submitted to him.

By Mr. MacIntyre:

Q. To whom?

A. To whoever this man was. I honestly don't know, or I would tell you, Mr. MacIntyre. That was done, and apparently accepted by him for his company, and later sent to other people for their consideration and adoption if they wished to, and not if they didn't.

Q. How did it come to be sent to the others for their adoption?

Mr. Stewart: Or rejection, he said.

A. What was your question now, sir?

Mr. Stewart: Please read the question to the witness.

Trial Examiner Norwood: Read the question.

(Question read.)

A. It was sent out by Mr. Blake to known manufacturers of conduit, as being something that they might use in their individual businesses.

642 By Mr. MacIntyre:

Q. Tell us, if you know, what prompted Mr. Blake to send that out.

Mr. Stewart: You mean his mental operation?

Trial Examiner Norwood: If you know. Can you answer that question?

The Witness: Well, it is an odd question.

Mr. Stewart: What was his answer?

Trial Examiner Norwood: Read the answer.

(Answer read.)

The Witness: I think that Mr. Blake—

Mr. Stewart: Now, I object, unless the witness knows. You are not supposed to speculate.

Trial Examiner Norwood: Answer that, if you know.

Mr. Stewart: If you don't know, why, say so.

Trial Examiner Norwood: If you have records and experience that indicate what Mr. Blake had in mind, give us those records and experiences.

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Give those details, so that we may judge of what was on Mr. Blake's mind.

The Witness: I think Mr. Blake is better qualified to answer the question than I am.

By Mr. MacIntyre:

Q. Didn't Mr. Blake tell you why he was sending these?

643 A. We had a lot of discussions about it, Mr. MacIntyre.

Q. What do you recall from those discussions that you had with him, as to why he sent them?

A. Well, I can only say again that I think that he thought—

Trial Examiner Norwood: Tell us what he said, either exactly or in substance what he said.

The Witness: To me?

Trial Examiner Norwood: Yes; or to anybody in your hearing.

The Witness: Well, I am anxious to tell you what I know, but I don't quite see how—

Trial Examiner Norwood: You can't recall any circumstances or words, or expressions?

The Witness: I know that we had a lot of discussion about the thing, he and I, and all I can say is that it was decided to send them to other people, to see whether it would fit into their particular business or plan of merchandising.

By Mr. MacIntyre:

Q. Mr. Booth, do you recall having told Mr. Frascati, an investigator for the Federal Trade Commission, that Mr. Blake submitted this consignment stock agreement form to the Association, with recommendations for adoption?

Mr. Stewart: The question, as I understand it,

644 is: do you remember telling Mr. Frascati that; that is all you are asked.

Mr. MacIntyre: The question is clear.

The Witness: I don't remember saying that; no, sir. I do remember discussing with Mr. Frascati, telling him whatever I could about it.

By Mr. MacIntyre:

Q. But you have no recollection as to what you did tell him about it?

A. Not the exact words; no, sir.

Q. Do you remember that you had one of these discussions with Mr. Frascati during the month of August, 1937?

A. Yes, sir.

Q. And do you remember, during the course of this discussion, that you had discussed consignment stock agreement forms?

A. I told him everything that I could about the operation of our office, and showed him all my records, and spent some time with him.

Q. But you can't tell us now precisely what you told him, or in substance what you told him about those things?

A. No, sir; I don't remember saying the statement that you made. I may have said it, I don't know.

Mr. MacIntyre: If your Honor please, I offer into evidence Commission's Exhibit, for identification, 664, 645 as the consigned stock agreement form used by the National Electric Products Corporation, in accordance with a form which was recommended as to form and substance, recommended by Mr. Blake to members in this industry.

Mr. Stewart: Objected to as not being properly established as the form recommended by Mr. Blake. All the witness undertook to say was that it looked like one, and until we get the form that was recommended by Mr. Blake, we have no standard of comparison, and moreover, I might say that I am confident that Mr. MacIntyre has the form recommended by Mr. Blake, so I suggest that his be put in evidence, so that we all know what form was followed.

Mr. Houston: This is further objected to on behalf of the National Electric, if it is introduced to show that it was a form of theirs and used by them. The witness never testified to that at all. He has no information at all on the subject. He isn't qualified for that purpose.

Trial Examiner Norwood: Any further objections?

The objection is overruled, and the exhibit is received and marked.

COMMISSION'S EXHIBIT 664 was offered and received in evidence.

Mr. Robison: May I ask whether the ruling includes

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the acceptance of Mr. MacIntyre's designation of what
646 this paper is?

Trial Examiner Norwood: Oh, no, it never does for any counsel. I don't accept their argument when I make a ruling.

Mr. Robison: There was more than argument.

Mr. Stewart: The way the question was asked; that is why I was objecting.

Trial Examiner Norwood: You testified as to the printed brochure?

The Witness: That is what I thought I was commenting on.

Trial Examiner Norwood: Counsel is not raising any point about that. That is the reason I didn't ask any questions to distinguish it.

I will distinguish that part of it.

Mr. MacIntyre: Only the printed form is offered. I should have separated the other, but when I separate things, I am not thought to be offering the entire story.

Trial Examiner Norwood: Just the printed part of the form is accepted.

Mr. Houston: If your Honor please, may I ask whether you have admitted this for the purpose of showing that this is a form used by National Electric Products Corporation, when the witness has not testified that it
647 was ever used by National Electric?

Trial Examiner Norwood: Just simply admit that form, as identified.

The Respondent may tell us all about it. If they never saw it before, they may tell us about it there, and the explanation is in your possession.

Received in evidence.

By Mr. MacIntyre:

Q. You have told us, Mr. Booth, that a part of the activities of Organization Service Corporation for the Rigid Steel Conduit Association and its members, was that of developing specific building contract forms.

Do you recall?

A. Yes, sir.

Q. I now show you Commission's Exhibits, for identification, 676-A and B, and 677-A and B, and ask you to state whether you recognize those documents as such forms as you have described as being developed by Organization Service Corporation?

A. That follows substantially the form which was developed. Whether the phraseology is entirely the same or not, I could not say.

648 Q. Can you tell us all you know, or tell us all you know as to why such forms were developed by Organization Service Corporation on the specific building contracts?

Mr. Poskanzer: I want to object to the question as improper in its form, on the ground that there is no proof here that the witness knows why they were developed.

Trial Examiner Norwood: Ask him what he does know about it. Objection overruled.

A. You probably know that in the construction of a building, a contract is let to a general contractor, and various parts are sublet to sub-contractors, and the electric work is one of those things which comes under the sub-contract clause, I would say.

A company is asked to take a contract, covering a specific building which required a certain amount of conduit. The distributor agent of the mill would notify his principals that he has such contract and in effect ask for protection on it for the life of the job. That is generally accepted in building practice, I think, in many lines.

The manufacturer would agree with his distributor and with the electrical contractor, to furnish the conduit for that particular job during the life of the contract, for an amount of so many tons. Some companies had a form which they used for that purpose called a specific

649 building job contract, and others did not. Copies of the various forms that were used were submitted to us for study, and from those, and in discussion with members as to what points they wished to have covered, individual members, as to what points they wished to have covered, that particular form, or one very like it, was developed in our office under Mr. Blake's guidance and direction.

651 By Mr. MacIntyre:

Q. Mr. Booth, please tell us whether members of the industry reported to you in connection with your work in the Organization Service Corporation matters concerning their use of such contracts as are evidenced by the form, Commission's Exhibits 676 and 677.

Mr. Robison: I object to the question, Mr. Examiner,

unless counsel makes it plain whether he means that some members so did, or that all members so did.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: The objection is overruled. That question evidently means two or more.

Answer that question.

Mr. Stewart: Well, Mr. Examiner, I do not think that is the question. I think it is any matters he is asking about. Are you asking about any contract form used?

Trial Examiner Norwood: Read the question, and I will let the witness answer.

Read the question again.

(Question read.)

Trial Examiner Norwood: Answer that.

The Witness: Some did and some did not.

By Mr. MacIntyre:

Q. Specify the names of those who did not report.

652 Mr. Stewart: Now, I ask that the question be—what is it you are asking? I suggest, Mr. Examiner, are you asking about the matters or what?

Trial Examiner Norwood: I think it is very clear.

Mr. Stewart: I do not. I am not being fussy about it. I do not know what he is asking. Is he asking about the matters they reported or the contract?

Trial Examiner Norwood: That is what he said. Do you recall any who did not report matters concerning the contracts to your organization?

The Witness: I can think of two.

Trial Examiner Norwood: Who are they?

Mr. Robison: I understand the question to be confined to members of this association, Mr. Examiner. Do you so understand it?

Trial Examiner Norwood: I do not understand it. He can answer as to any member of the industry.

The Witness: The Laclede Steel Company did not use that form or report any contracts to us.

Trial Examiner Norwood: Who else?

By Mr. MacIntyre:

Q. Who else?

A. The other name that I had in mind was not a member.

Trial Examiner Norwood: Well, who was that?

Mr. Stewart: Tell us who it was.

653 The Witness: Clifton Conduit Company for one.

Trial Examiner Norwood: Any others?

The Witness: Youngstown, Youngstown Sheet and Tube Company.

By Mr. Robison:

Q. Are you mentioning that company as a member or non-member?

A. I said not a member. I think there was a company named Austin, I cannot remember the full name. I think they were in Chicago.

By Mr. MacIntyre:

Q. Now, Mr. Booth, you have told us about an activity of the Organization Service Corporation in investigating specific building contracts in the performance of such contracts for members of the industry. Name any one that you can for whom you did not investigate such contracts in the industry, that is the manufacturers of conduits.

A. In the industry?

Q. Yes.

A. Youngstown Sheet and Tube Company.

Q. Are you sure you never investigated a contract for the Youngstown Sheet & Tube Company?

A. I do not recall doing it, sir.

Q. You just have no recollection of doing it at this time.

Mr. Robison: Well, I object to that question,

654 Mr. Examiner.

Trial Examiner Norwood: He can determine his degree of certainty.

Mr. Robison: I do not think the degree should be suggested by counsel. Let him state.

Mr. MacIntyre: I am asking him if he is positive.

The Witness: I do not recall ever having been asked by them to investigate a contract.

By Mr. MacIntyre:

Q. Are you absolutely positive that you never did?

A. No, if I was going to be shot I would not want to say so. I do not mean to be funny. I am trying to tell you what I know.

Mr. MacIntyre: I appreciate that, Mr. Booth.

By Mr. MacIntyre:

Q. Mr. Booth, describe as best you can the manner in which reports were made to and handled by the Organization Service Corporation with respect to three special building contracts.

Mr. Payser: Pardon me, please. I do not believe the last question was answered fully by Mr. Booth. If I
655 recall, he was asked as to these investigations on the specific job contracts, did he recall who partook of those, or requested the Organization Service Corporation to investigate. He answered partially by naming one of the respondents, and then there was some examination or question as to that. Had he fully answered that question?

Mr. MacIntyre: I believe he has.

Mr. Peyser: I did not hear it.

Trial Examiner Norwood: You may ask him on cross-examination.

Mr. Peyser: All right.

Trial Examiner Norwood: Proceed.

The Witness: May I hear your last question again?

Mr. MacIntyre: Read the question.

(Question read.)

The Witness: At the start of our being requested to investigate these contracts the various companies sent us in a list of contracts which they had outstanding at that time. After that, as new contracts were secured, they sent us a copy of the contract form itself.

By Mr. MacIntyre:

Q. Well, why were they reporting these contracts to you in that way?

A. They had requested us to investigate them to find out whether they were actual contracts or not and report
656 back to them.

Q. Well, tell us whether or not it is a fact that all contracts were reported to you whether you investigated them or not?

A. I can only assume that they were, and any that were submitted to us were investigated.

Q. Well, was it your understanding that all contracts were reported to you?

A. That is what I understood, yes, sir.

Q. Mr. Booth, I now show you Commission's Exhibits 490A to 490N, a series of correspondence between you and

Mr. Garland and others, concerning the school district of Philadelphia, Pennsylvania, bid opened June 18th, 1937. Would you describe that situation as an investigation by the Organization Service Corporation of closed and past transaction or a specific building job investigation, specific building job contract investigation?

Mr. King: I do not mean to interrupt, but I do not know whether that was Commission's Exhibits 480A to M, or 490?

Trial Examiner Norwood: Commission's Exhibits 490A to N.

Mr. Poskanzer: May I ask if Mr. MacIntyre's purpose is to have this paper described by this witness, or a legal opinion from him as to what it constitutes?

657 Mr. MacIntyre: Mr. Booth has told us this morning they conducted closed and past transaction inquiries, as he described them, and also conducted investigations of specific building contracts. Now, here is a situation that is set forth by these papers, and I am simply asking him if he can distinguish as to whether the situation shown here is the one of those two as against the other.

Mr. Poskanzer: Of course, there may be something else.

By Mr. MacIntyre:

Q. I now show you Commission's Exhibits—

Mr. Stewart: Just a moment, just a moment.

Trial Examiner Norwood: Let him answer.

Mr. Stewart: Let him answer the question if he understood it.

By Mr. MacIntyre:

Q. This is going to the same question. I show you Commission's Exhibits 489A to H, inclusive, and ask you if you need to, to make reference to those in connection with your answer.

Mr. Stewart: Mr. Examiner, may we see what is being shown the witness?

Trial Examiner Norwood: Well, I think you may see it later.

Mr. MacIntyre: They are all exhibits that are 658 in evidence.

Mr. Stewart: I do not know whether I want to object to the question or not without knowing what he is being shown.

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The Witness: I have not looked at these yet. May I answer the first part of your question first?

By Mr. MacIntyre:

Q. Yes.

A. These papers appear to indicate—

Mr. Robison: Referring at which papers?

The Witness: Commission's Exhibit 490A to N, insofar as this particular form is concerned, not any correspondence.

By Mr. Stewart:

Q. Indicate what?

A. That this was a closed transaction inquiry initiated by someone whose name is not disclosed here, and sent out by me for Organization Service Corporation in an attempt to find out the facts in connection with this particular case.

By Mr. MacIntyre:

Q. You do not need to refer to Commission's Exhibit 489 in order to tell us that.

A. I can tell you on that, if you want me to.

Q. You have answered the question. Thank you.

659 How do you determine, or how did you determine in the office of the Organization Service Corporation whether a job should be and was to be undertaken by you in investigation as a past and closed transaction, or as a specific building job contract?

A. If it were a specific building job contract, we would have a contract form for it.

Q. Well, before you assigned the forms to the project of the investigation, Mr. Booth, how could you determine which ones to assign, that is as to whether it was a past and closed transaction or whether it was a specific job building contract form?

Mr. Welch: Do you understand the question, Mr. Booth?

The Witness: Not clearly.

Trial Examiner Norwood: I just wish you would not interrupt.

660 By Mr. MacIntyre:

Q. When you received an inquiry from one of the members of the Rigid Steel Conduit Association, requesting you to make an inquiry of some project on which conduit was to be used, pursuant to some contract or some bid which

was giving rise to a contract, how did you determine whether or not you would assign to that the form for closed transactions, or the form for investigation of specific building contracts?

Mr. Stewart: Now, I object to that question, because it seems the question is so contradictory: in other words, the question is: how do you determine when a contract is to be used, whether it is a closed transaction or a specific building transaction? If it is to be used, why it could not be a closed transaction.

Trial Examiner Norwood: The objection is overruled. Do you understand the question?

The Witness: I think so, sir.

Trial Examiner Norwood: Answer, please.

The Witness: There were two sets of forms. If the member was inquiring about a closed transaction, he sent us a closed transaction inquiry form. With respect to the specific building job, he would send us a copy of the contract, without any comment. We were to investigate it in all its different phases, as to its validity.

661 By Mr. MacIntyre:

Q. Did you ever investigate a specific building contract that was a past and closed transaction?

A. We could only assume when the contracts came in that the manufacturer and the contractor whose names appeared in the contract form had the job.

Q. Now, referring again to Commission's Exhibit 490-A to N, didn't you in the course of your activities in your work for the Organization Service Corporation, and in connection with its work for the Rigid Steel Conduit Association, investigate jobs of the nature of that Philadelphia school job, as specific building contract jobs?

Didn't you treat such jobs as closed, and also as specific building contracts?

A. Depending on how they were sent to us. If we had the specific building job contract form for it, we would investigate it as to its validity. If they sent the same thing in to us on a closed transaction inquiry, to find out where the business was placed, we would try to find that information and report it back on a closed transaction inquiry form.

Q. You did that before you determined whether it was a specific building job; is that true?

A. I do not think I would say that, sir. We might have had two going through at the same time, one on one
662 form and one on another, and not realize it with the mass of papers we had going through.

Q. That is, going through the same project?

A. It might have been; yes, sir. I do not know that this was the case.

Q. In other words, as to whether or not you investigated a specific project, as a specific building contract, or as a past and closed transaction, depending upon how it was requested that you investigate it; isn't that true?

A. That is right.

Q. What do you recall as the reasons advanced to you by those who requested you to investigate past and closed transactions, Mr. Booth, as far as such investigation?

A. Principal among them was that they had quoted on a piece of business, and had not secured the order, and would like to know where it was placed, or if it had been placed. They had quoted on something and got no business.

Q. Did they tell you why they wanted to know that?

A. The common reason was because their salesman had been told that his price was too high.

Mr. MacIntyre: Read the answer, please.

(Last answer read.)

By Mr. MacIntyre:

Q. That someone had cut the price?

A. Not necessarily; that his price was too high;
663 that is why he did not get the order.

Q. Well, isn't it a fact, Mr. Booth, that once these inquiries were made, you made effort on behalf of those who made the inquiry, or asked you to make it, to determine whether the price that was charged on the project or had been quoted on the project was higher, or lower, or the same as the price quoted by the person who asked you to make the inquiry?

A. Yes. We endeavored to find out the price at which the order was placed.

Q. And you reported that to the person who requested you to make an inquiry?

A. That is so.

Q. Now, as to your investigation of these specific building contracts, I believe your form in evidence on those show that you were asked to inquire as to whether the contract

had been—I mean, as to whether the work to be undertaken by the buyer would require a certain amount of conduit?

A. That is right.

Q. And in addition to that, as to whether someone else had also made commitment to such buyer for furnishing an amount equal to the amount required on the job; is that true?

A. We were not asked by the man who sent that in to us to find that out.

664 Q. But you did find it out?

A. We found it out if one or more contracts—two or more contracts were filed on the same job.

Q. And you reported that to the members of the Association?

A. Yes, sir. There should be only one that was valid.

Mr. MacIntyre: If your Honor please, I ask that the last statement made by the witness about the validity of the contracts be stricken from the record.

Mr. Taylor: If your Honor please, I think that is a proper explanation of the witness' answer. I think it is within his right.

Trial Examiner Norwood: Read the question and the answer.

(Last question and answer read.)

Trial Examiner Norwood: Please read about two questions back and the answers.

Mr. MacIntyre: The witness answered the question and he tacked on something as to whether—on the end of it as to its legality.

(Record read, as requested.)

Trial Examiner Norwood: Motion denied.

Proceed.

By Mr. MacIntyre:

665 Q. When you were telling us earlier this morning, Mr. Booth, as to what activities the Organization Service Corporation had undertaken for the members of the Rigid Steel Conduit Association, I don't believe that you mentioned anything about any requests or inquiries to determine whether the particular tradesmen in conduits were wholesalers.

A. Whether what, sir?

Mr. MacIntyre: Read the question.

Trial Examiner Norwood: Read the question.

(Question read.)

By Mr. MacIntyre:

Q. Do you recall whether or not you received inquiries, I mean requests that you make such inquiries?

A. Will you read me the question again?

Trial Examiner Norwood: Did you receive any requests from members of the industry to investigate whether or not particular dealers were wholesalers, or not?

The Witness: Yes, we did.

By Mr. MacIntyre:

Q. Did you ascertain why such requests were made?

A. No, I don't think we asked why.

Q. You made such investigations, though?

A. Yes, sir.

Q. And you made reports to the members who re-
666 quested such information?

A. Yes, sir.

Trial Examiner Norwood: Did you furnish that information then to the Association, the Rigid Steel Conduit Association? When you would make a particular investigation, would you give them carbon copies of the replies, or anything like that?

The Witness: Only to the extent—

Mr. Stewart: I could not hear your question very well.

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Stewart: You mean the Association, as such, or the members; that is the reason I asked the question.

Trial Examiner Norwood: I said "Association."

The Witness: Only to the inquiring member and such others as might have asked for the information when they replied to the inquiry.

Trial Examiner Norwood: Well, was it part of the routine to give the Association that information?

The Witness: Only on inquiry, sir.

Trial Examiner Norwood: Only when they asked you to?

The Witness: Yes, sir.

667 Trial Examiner Norwood: Did they have any standing request?

The Witness: No, sir.

By Mr. MacIntyre:

Q. The request for such information, though, was quite general, wasn't it, Mr. Booth?

A. There wasn't any great preponderance of requests for it, no, sir.

Q. But it was done quite a number of times, wasn't it?

A. Yes, sir, a number of times.

Q. By quite a number of members?

A. I think so.

Q. Even though they had not originated the request for the inquiries?

A. I don't understand you.

Mr. Stewart: I submit that is argumentative and leading.

Mr. MacIntyre: I will admit that it is leading.

Trial Examiner Norwood: You may answer that.

Mr. MacIntyre: Read the question, please.

(Question read.)

Mr. MacIntyre: Strike the last question. I will reframe it.

By Mr. MacIntyre:

Q. You do know that you sent the results of those inquiries to members who did not originate the requests 668 for such inquiries?

A. They did not originate the original inquiry; yes, sir, that is right.

Q. Mr. Booth, I now show you Commission's Exhibit 519-C and 519-D and will ask you to state whether or not 519-C went to the names of those conduit manufacturers who are here in the list on 519-D?

A. I would think that was a reply to that; yes, sir. It has no name on this sheet to identify it as being this particular inquiry, but that would be the information we had.

Q. Well, you and Mr. Welch have certified this 519-D as a recapitulation of the replies to whom 519-C was sent?

A. Well, that is probably because it is attached. I would assume that was correct, that is the replies that were received.

Q. And what has become of the replies themselves, as distinguished from this recapitulation?

A. The original answer, you mean?

Q. Yes.

A. They have probably been destroyed as being a record which was no longer necessary, when we discontinued handling the organization.

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Q. Well, why was such a recapitulation made up in your office?

669 A. I would assume that that was our method of passing the information back to the inquirer. I am trying to tell you from memory.

Q. Well, you have some memory and recollection about the manner in which you handled your affairs in that direction, don't you, Mr. Booth?

A. Yes, sir, I am trying to tell you that that is the manner in which we handled it.

Q. The best recollection you have is that that is the method?

A. Yes.

Q. And does that also apply as to 520-B and 520-C, Commission's exhibits?

A. On that particular inquiry, yes, sir.

Q. And can you tell us where the original replies, which are recapitulated on 520-C are at this time?

A. No, sir, I don't know where they are. They are probably destroyed.

Q. Who destroyed them?

A. When the Rigid Steel Conduit Association severed its connection with our office, or we severed our connection with them, records which were not statistical or minute records, having no further purpose, would be destroyed. They were of no value to us.

Q. You mentioned this morning that one of the

670 activities that the Organization Service Association undertook for the Rigid Steel Conduit Association and its members, was that of compiling certain figures, shipments, and other statistics.

Do you remember?

A. Yes, sir.

Q. The reports made to you in that connection by manufacturers of conduit, showed the prices at which these various lots that they had shipped had been charged for the same, didn't it, or didn't they?

A. No, sir, the reports comprised for a company so many tons with such and such a dollar value.

Q. That is, showing the amount that was received for that lot?

A. I think that is correct, sir.

Q. Is that true?

A. I think that is correct.

Mr. Poskanzer: I object to that. I object to the remark by Mr. MacIntyre. This was total sales for a period. Wasn't it in tons and dollars, both? There were no individual shipments there.

The Witness: No, sir.

Mr. Poskanzer: I ask that Mr. MacIntyre's remark about the shipments be stricken from the record.

By Mr. MacIntyre:

671 Q. Mr. Booth, if your reply to my last question is not correct, as you have stated it on the record, then will you please tell us how you were able to make the members of the Rigid Steel Conduit Association and other manufacturers of Rigid Steel Conduit report such as is evidenced by Commission's Exhibit 496?

Mr. Taylor: There was no evidence that he was able to make them report. I don't think there is any evidence of that character in the record at any point.

672 Mr. MacIntyre: I am handing him something and asking him if he didn't do what he said that he did on the record, which was later qualified, then how could this report have been made by him to such members?

Trial Examiner Norwood: I will overrule the objection, and ask the witness to make a complete explanation.

Mr. Robison: Mr. Examiner, I object to the question on the ground that it referred not only to members, but to others in the conduit industry. There is no evidence here of any others than members having been connected in any way with this paper.

Trial Examiner Norwood: The objection is overruled.

Mr. Robison: Exception.

The Witness: I don't recall the circumstances connected with this particular case, Mr. MacIntyre, but on occasion we were asked to determine what percentage of business shipped during the month was done on the current card. It might have been this card, or it might have been some other number.

By Mr. MacIntyre:

Q. That is the published price cards of the members?

A. Yes, sir.

Q. And you were able, before sending out this Commission's Exhibit 496, to determine that at that time
673 as to that card, weren't you?

A. I had apparently asked for that particular month, December presumably of 1937, for this information as to what percentage of the business shipped in that month was done on that card for some particular inquiry.

Q. That is in accordance with the price quotations of Card 76?

A. Yes, sir.

Q. And from the reports you received you were able to determine that?

A. Yes, sir, on my inquiry.

Q. And you in turn reported it?

A. Yes, sir.

Q. Is it your statement now, Mr. Booth, that this is the only instance in which you ever did such a thing?

A. No, sir.

Q. During the course of your enumeration of the activities this morning that the Organization Service Corporation performed for the rigid steel conduit industry, especially for the Rigid Steel Conduit Association members, I don't believe that you mentioned any work that you did with Mr. Charles Donnelly, one of the respondents here. You carried on some correspondence with him, did you?

A. Yes, sir, he was employed by the Association as a Traffic Manager, as I remember.

674 Q. Why did you, as an employee of the Organization Service Corporation, in connection with the work it was doing for the Rigid Steel Conduit Association, carry on correspondence with Mr. Charles Donnelly at that time?

A. Very likely I was directed to by the Association for whatever activity I did.

Q. For what purpose?

A. For what purpose?

Q. Did they tell you why to carry on this correspondence?

A. I believe that they subscribed to Donnelly's service for freight rates applying to this particular commodity to certain destinations which they might get from Donnelly or any other traffic bureau.

Q. Why were you at various times asked by them to correspond with Donnelly about that?

A. Because they had no clerical force. We were doing the operation of the Association.

Q. Well, what did you do with the information that Donnelly sent you in response to your inquiries?

A. Well, it all depends upon the nature of the inquiry and the nature of the reply. I don't know just what you have reference to, sir.

Q. I show you Commission's Exhibit 492 and have my last answer to apply to the situation that is described in that as the activity involved.

675 Mr. Stewart: Wait until I get that question. I don't think you meant what you said. Will you read the question?

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Stewart: You mean his last answer, not your last answer.

Mr. MacIntyre: My last question that should be. Thank you.

Mr. King: If your Honor please, I think before this witness answers that question he is entitled to see not only Exhibit 492 as an isolated instance or case, but also Commission's Exhibits 399 and 398.

Trial Examiner Norwood: I don't think so. I think he may answer with respect to the one question, and if you want to show him the others you can do so on cross-examination. Proceed.

The Witness: I don't recall this particular thing, Mr. MacIntyre. Apparently—

Mr. Stewart: Well, I submit if the witness doesn't recall it, he should not speculate. I think the answer should stop there, and I object to any further explanation.

The Witness: I wrote the letter and I want to try and interpret what I said.

676 Mr. Stewart: Well, that is all right.

By Mr. MacIntyre:

Q. Well, using that letter to refresh your memory and recollection as to what you did with information which you received from Mr. Donnelly in connection with correspondence that you had with him, what is your answer as to what you did with it?

A. I don't know that I got this information from Mr. Donnelly.

Q. You didn't get it from Mr. Donnelly? Where could you have received it from?

A. This was an inquiry regarding a closed transaction inquiry with reference to whether or not store door de-

livery obtained, as I read this from here, and the reply came back to me and was transmitted back to the inquirer that there was no store door delivery carload railroad tariff for this particular point. I don't know where the point was.

Q. You recall that Mr. Donnelly did not give you the information that no store door delivery was involved at those particular destinations at the tariff involved in the shipment?

A. He never gave me anything, sir. He published a book which these people bought. I had nothing to do with it.

Q. You are positive that he never sent you any information as to whether store door deliveries were in-
677 volved at any particular point or at any particular tariff rates?

Mr. Stewart: I submit at this late date that is very unfair to say he is positive. The man said he doesn't recall.

The Witness: I don't remember.

By Mr. MacIntyre:

Q. But you are not positive that he didn't send you such information?

A. No, sir.

Trial Examiner Norwood: The objection is overruled.

A. (Continuing) I may have asked him for information, some information of that kind. I don't know.

Q. I show you Commission's Exhibit 655 and ask you to state whether or not during your activities as an employee of Organization Service Corporation, in connection with its handling of affairs for the Rigid Steel Conduit Association, you saw such document, or a duplicate of such document as Commission's Exhibit 655?

A. I have seen it, yes, sir.

Q. Where?

A. I had one in my office once, but I am not sure.

Q. How did it come into your possession?

A. That I could not remember.

Q. You don't know whether or not you got it from
678 Mr. Donnelly?

A. No, sir, I don't remember that.

Q. You were then connected with the affairs of the Rigid Steel Conduit Association. Did you know of anyone in the Association who was preparing such books for it?

A. Donnelly prepared on order from different manufacturers, as far as I know.

Q. Are you positive you never made any distribution of them to the manufacturers?

A. Not through my office, no, sir.

Q. Well, through any office?

A. I think they were distributed from the technical office which was on 42nd Street, and with which we had no contact. Our office was at 74 Trinity Place.

Q. When you say the technical office on 42nd Street, you mean the office of the Rigid Steel Conduit Association on 42nd Street?

A. The Rigid Steel Conduit Association was an association before we came in as managers of it, and as such had an office on 42nd Street from which its technical activities and standardization work was directed. They had no commercial aspect in that office at all. We did have in ours. We had no technical. This thing was handled through that office at someone's direction, I don't remember whose, sir, but we did not have it in our office or
679 the distribution of it.

Q. Now, when you refer to "This thing", you are referring to Commission's Exhibit 655?

A. Yes, that and supplements of it which came out as I understand.

680 By Mr. MacIntyre:

Q. Mr. Booth, I show you Commission's Exhibit 491-A to M. I will ask you if that exemplifies—is typical of the inquiries which you made at the request of members of the Rigid Steel Conduit Association, to determine whether particular tradesmen rated as wholesalers?

Mr. Stewart: What is the date of that, please?

The Witness: June 24, 1937.

May I have your question again?

Mr. MacIntyre: Please read the question.

(Question read.)

The Witness: I think it was similar to most of the inquiries that were made of that nature.

Mr. MacIntyre: That is all.

If your Honor please, I tender the witness for cross-examination.

Trial Examiner Norwood: Cross-examine.

Would you rather wait until after the lunch period?

(Whereupon at 11:10 A. M. a recess was taken to 12:15 P. M.)

681 Afternoon Session—12:15 P. M.

Trial Examiner Norwood: Gentlemen, please come to order.

Proceed.

Mr. MacIntyre: If your Honor please, I had tendered the witness for cross-examination. Since cross-examination had not been undertaken, I would like to ask the witness one or two additional questions, if I may.

Trial Examiner Norwood: Go ahead.

Direct Examination (Resumed) by Mr. MacIntyre.

Q. Mr. Booth, this morning I asked you about a communication that you had with Mr. Charles Donnelly, concerning freight rates, traffic matters, especially store door delivery privileges and tariff rates therefor, and you stated that you did not recollect that you had any correspondence with him on that subject.

Do you recall?

A. Yes. I remember saying that I do not recall it.

Q. I now show you Commission's Exhibit 374, and will ask you to refer to that and see if that refreshes your memory and recollection on that matter.

A. Well, truthfully, it does not refresh my memory,
682 except that I will confess that he apparently wrote me this letter, and that I apparently made inquiry on it, or he would not have written it. I do not recall it.

Q. Well, let us look—

Mr. Stewart: Well, Mr. MacIntyre, let us understand each other. As I understood this exhibit this morning that you asked him about, it had to do with a particular matter.

Now, are you asking whether he ever asked Donnelly as a general proposition, or whether he asked him about that particular transaction?

Mr. MacIntyre: My question to him this morning was more than a particular proposition before I got through with the question.

Mr. Stewart: I did not so understand it. That is the reason I ask.

By Mr. MacIntyre:

Q. I now refer to Commission's Exhibit No. 389, and ask if that, after referring to it, refreshes your memory

and recollection on the subject of your correspondence with Mr. Donnelly concerning such matters?

A. It is apparent from this that I wrote him about this matter. I do not have any recollection of the individual case.

Q. Although these are letters between you and
683 Donnelly, you have no recollection of them at all?

A. Well, having seen them now, I have a recollection of having written them, because I know that is my signature and it is an inquiry from a definite company about a definite thing.

Q. But you have no independent recollection about the matters whatever?

A. As to detail; no, sir.

Q. And except by now, referring to these documents to which I have made reference, you cannot tell whether you had, or cannot recall whether you ever had any correspondence with Donnelly about this matter?

A. I recall having it now, having seen the papers, but I would not be able to tell you whether it was ten letters or forty-eight, over a period of two years or more.

Q. But I say it is only through reference to these letters, that you have been able to recall that you had any correspondence with Donnelly about these matters?

A. No, I think that I can remember probably that I had some correspondence with him, but what it was about, the nature of it, I do not know; I do not remember that.

Q. In other words, you do not recall the nature of any correspondence you had with Donnelly at all, independently of any document?

A. No, except by seeing the record.

684 Mr. MacIntyre: That is all.

Trial Examiner Norwood: Cross-Examination.

Cross-Examination by Mr. Stewart.

Q. Mr. Booth, did you have other duties besides those relating to the affairs of the Rigid Steel Conduit Association during the period in which the Organization Service Corporation represented the Rigid Steel Conduit Association?

A. Yes, sir. I handled two other groups in Mr. Blake's office.

Q. And was the work in connection with the other groups fairly voluminous?

685 The Witness: Fairly so, but not in as great detail as did Conduit.

By Mr. Stewart:

Q. The services and the scope of the duties of the Organization Service Corporation with the Rigid Steel Conduit Association were covered by a written contract between the two; is that not a fact?

A. Yes, sir.

Q. And I believe that contract appears in the min-
686 ute book of the—the minutes of the Association?

A. I think it appears in meetings for organization purposes, or something of that kind. I was not present, but I remember seeing it.

Q. Now, directing your attention to the inquiry relating to the specific building contract, you were asked as to the reason for that service. Do you recall Mr. MacIntyre's inquiries regarding that matter?

A. Yes, sir.

Q. First, did the Organization Service Corporation investigate those specific building contracts, or was another organization employed for that purpose?

A. We employed an outside agency to make the actual investigation.

Q. And will you relate the mechanics of the operation from the time an inquiry came in until it went back to the particular member inquiring with regard to the specific building contract?

A. Well, a company would send us a copy of a contract covering a specific job, which they purported to hold through some electrical contractor and some wholesaler. The contractor would give some designation of the job held, so that it might be identified, either by address or like the St. Regis Hotel, and it would state the number of feet or a total tonnage, supposedly required for
687 the job. When that came into my office, I made a card record of it so it could be indexed and found, in case another contract covering the same job came in from some other source, which very frequently did.

We then sent to this outside agency all of the pertinent information that was given to us, and then they had an investigator go to the premises, check the job, often get-

ting information through the foreman and sometimes from the contractor direct, and sometimes even had to go to the architect and trace the plans to see what footage might be required. They would send us back a report that the contract appeared to be O. K. in every respect, or that there was no such building contract contemplated at the address given, or that the address given was between two buildings which were so tight together, that nothing could be built between them, so that there was only so many tons needed for the job, or in some cases, that the amount of the conduit, specified on the contract, would not be sufficient to fill the job.

When that information came back, we sent it to the member whose contract was on file and it did not go to anybody else unless they also happened to have a contract covering that same project, and that is why I said this morning there could not be but one that was valid. If the material of A Manufacturer was on the job, cer-
688 tainly B Manufacturer could not have a contract there that would be worth anything.

689 Mr. MacIntyre: Now, just a moment. I move to strike that statement of the witness. It is passing on the legal validity of contracts in his testimony. It is most important as testimony here as to whether it is legally good or legally bad as a contract. We will let the Courts and the Commission decide that.

By Trial Examiner Norwood:

Q. Do you pass on these contracts as to whether they were legal or not? Why do you say that?

A. Perhaps I have misused the word. Perhaps I meant bonafide.

Q. You mean an exclusive contract on a building would preclude others from making the same kind of a contract, don't you?

A. That is right.

Trial Examiner Norwood: I think that is harmless. The motion is denied.

By Mr. Stewart:

Q. Well, Mr. Booth, as a matter of fact I take it that what you really mean is that if—

Mr. MacIntyre: Now, just a moment.

Mr. Stewart: I am on cross-examination, sir.

Mr. MacIntyre: I know, but I object to counsel for any of the respondents taking one of the respondents here and telling him what he means in a question.

690 Trial Examiner Norwood: Yes. You can't lead this witness.

Mr. Stewart: Well, I have always understood, Mr. Examiner, that if you put a witness on cross-examination—in fact, I think what is one of the most devastating experiences I ever had was that the other side got my witness on cross-examination and led him all over the place. Now, it seems to me Mr. MacIntyre put this gentleman on as a witness and I have a perfect right to lead him in cross-examination.

Trial Examiner Norwood: No, he is an employee of one of your clients.

Mr. Robison: No, I wish to correct that statement.

Mr. Stewart: No.

Trial Examiner Norwood: Now, you cannot lead a witness who is favorable to your side.

By Mr. Stewart:

Q. Mr. Booth, state whether or not when you stated that there could be only one valid contract on a specific building, you meant that if there was a contract for a particular amount of material there could not be another contract for the same amount of material and both be valid?

Mr. MacIntyre: Now, I object, because that calls for a legal conclusion.

691 Mr. Stewart: Assuming—

Trial Examiner Norwood: I think he has already told us.

The objection is sustained.

By Mr. Stewart:

Q. Now, then, Mr. Booth, when the information on this particular job came back to you, as I understood you said that was reported back to the member who made the inquiry?

A. Yes, sir.

Q. And except where another member who had a contract on the same job had made an inquiry relating to the same job, the information never went any further than the particular member, is that correct?

Mr. MacIntyre: Now, I object. What more leading question can we have than that. It is testimony by Mr. Stewart asking for confirmation by the witness.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: The objection is overruled. He may answer that, but I will ask counsel not to lead this witness. Answer the question.

The Witness: The question is whether or not—

Trial Examiner Norwood: Is what you said heretofore—

692 The Witness: The answer is yes.

Trial Examiner Norwood: You say that that information went to nobody else except the inquirer or someone else having a contract on the same job?

The Witness: On the same job to be identified as the same job.

By Mr. Stewart:

Q. Now then, there is in evidence I believe an exhibit which shows a compilation at the end of a given period of the total number of contracts and the total number tonnage and figures of that nature relating to specific building jobs. Was that the form in which the industry, or rather the members of the Association got the general information regarding these specific building jobs?

A. Yes, sir, because they knew the total outstanding tonnage and they knew what had been found necessary to be sent to the job, and what had been canceled, and what the unfilled balance was.

Q. And state whether or not those reports simply showed total and nothing more?

A. Totals.

Q. Will you state, Mr. Booth, what the purpose of this inquiry was with reference to these specific building job contracts?

Mr. MacIntyre: I object. It is cumulative. It has
693 been covered by this witness once on cross and once on direct.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: The objection is overruled. Answer the question.

The Witness: It was to prevent fraud to this extent,

that two contractors might report to their principals, that is, to the mills from whom they bought material that they had such a job, and we might find that there was one contractor's material, or one contractor was actually doing the work and supplying the material from another mill and if he could convince, or another contractor could convince his mill that he also had a contract on that job, he might draw in the material, use it on some job at some later date in the event that the market was elevated, or if it was as depressed he would say, "I did not get that, cancel the contract".

695 By Mr. Stewart:

Q. Now, Mr. Booth, you have told us about the possibilities under this specific building job contract. I should like to have you tell us whether, as a result of the investigations which were made by this outside agency

696 and with which you are familiar, you did find abuses of the specific building job contracts, and if so, give us examples of them.

A. Examples at this late date would be difficult to name. I do recall that we had one job, as I said, where there was no such address; and we had another job on which six contracts were filed by six different mills. Whether they were through the same contractor or whether they were through different contractors, or whether they were through the same wholesalers, I don't recall, but that was a funny one, to have six contracts filed for one given job.

Trial Examiner Norwood: What was the result of that?

The Witness: Well, a very large tonnage was cancelled.

Trial Examiner Norwood: In cases where they are not cancelled, do you find that the contractors buy more than is needed on that one job?

The Witness: Very often they over-specify.

There was an occasion where a contract was underspecified, and in that case, we told the mill that our investigation showed they were entitled to more than the contract covered.

By Mr. Stewart:

Q. Now, then, Mr. Booth, once a report was made

697 to the particular manufacturer making the inquiry, who paid for that service?

A. The manufacturer, the individual manufacturer. It wasn't billed to the Association, or paid for out of their funds. It was a separate charge, so much per contract for investigation.

By Mr. Stewart:

Q. Mr. Booth, reference was made in your direct examination to the records, which, as I understood you, you said the records not having any further use by your organization, were destroyed?

A. Yes, sir.

Q. Now, when were they destroyed?

A. I should say within four or five weeks after we had resigned as managers of the Association and had given up our contract and released the membership from any obligation under the contract.

Q. From the standpoint of the date, can you remember approximately when that was? Was it sometime in 19—

698 A. I should think it was either April or May of 1938, if I have the right year. I am trying to remember whether it was '36, '37 or '38.

I am mixed up on my year, as to when we started. '39, I now think it was.

Q. Well, prior to that time, had anyone from the Federal Trade Commission interviewed you with reference to your activities?

A. Yes, sir.

Q. Who was that?

A. A man named Frascati.

Q. And when was that?

A. Well, I think Mr. MacIntyre said this morning it was in August of '37, and I would think that was about right, because Mr. Blake was in Europe that summer. Whether it was July or August, I wouldn't have known, if he hadn't said it.

Q. At this time did Mr. Frascati ask for access to your records?

A. Yes, and I volunteered to show him everything that was in my office.

Q. In addition to volunteering it, what did you do from the standpoint of showing him the records?

A. Well, I went through all of these different things which we had: I explained to him first that Mr. Blake
699 was in Europe; that I knew that if he were home, he would want me to take him to my office and show

him everything that was there, and tell him how it was used, and why. I tried to do just that, and I said that if he asked me anything that I didn't know, something that Mr. Blake had handled, such as these contracts and their preparation and things of that kind, that I would have to get that information from Mr. Blake on his return, but we did go through a lot of specific building job contracts.

We went through a lot of closed transaction inquiries. I showed him all our statistical records. He went through our correspondence files, and picked out of that some correspondence, and asked for copies of several specific building job contract investigations, several closed transaction inquiries, different forms, card forms, and things of that kind which we used, copies of our minutes, bulletins, things of that kind, which had gone out to the membership from our office.

He was there several days. I can't remember just how many, but I know he was there several days.

Q. Well, did you give him everything he asked for?

A. Yes, sir.

Q. Now, directing your attention to this inquiry with regard to determining the status of wholesalers, as I understand it, such inquiry was made at times?

700 A. That is right.

Q. And what was the purpose of that?

A. Why, it was well known in industry that there was a price on conduit to wholesalers, and a price to contractors. A contractor was supposed to buy his conduit through the wholesale channels, and if a contractor could convince a manufacturer that he was a wholesaler, as well as a contractor, conducted both businesses, he could buy all of his conduit on a wholesale price, which would give him an advantage over every other contractor in that locality in bidding on a job.

I think there, again, it was to prevent fraud and also to protect the manufacturer against an accusation under the Robinson-Patman Act of discriminating between his customers.

Mr. MacIntyre: Just a moment. I move that that portion of the witness' answer, beginning with "I think" be stricken. It goes to a legal conclusion, as to his thought that what occurred, as he described it, was a fraud, in violation of the Robinson-Patman Act.

Trial Examiner Norwood: It was what you understand to be the purpose of those investigations?

The Witness: It was to prevent the manufacturer from being accused of discrimination between customers.

Trial Examiner Norwood: Motion denied.

701 By Mr. Stewart:

Q. Now, Mr. Booth, directing your attention to these freight bulletins which were shown you, just to make it plain, what, if anything, did the Organization Service Corporation have to do with the freight bulletins?

A. I would say nothing.

Trial Examiner Norwood: Did you have any complaints with respect to the freight bulletins?

The Witness: I might amplify it to that extent. People wrote us there was an error in the rate and we would notify Donnelly, or somebody else, and that would probably be taken care of.

By Mr. Stewart:

Q. Let me ask: do you recall the circumstances or anything in connection with the employment of Donnelly? I am just asking you: do you recall anything in connection with that?

A. Yes, I know some of the people didn't like him.

Q. Do you recall when his services on behalf of the Association were terminated?

Mr. MacIntyre: If your Honor please, I object to the question.

702 Mr. Stewart: I am asking him if he recalls.

Mr. MacIntyre: I haven't stated my objection. I object in that the question assumes a fact, as contrary to the evidence.

Trial Examiner Norwood: Objection sustained.

By Mr. Stewart:

Q. Well, I show you carbon copy of a letter for the purpose of enabling you to refresh your recollection, and ask you to state—

Mr. MacIntyre: May we have that marked for identification?

Mr. Stewart: Not yet.

Mr. MacIntyre: If the witness is looking at it, I want it marked for identification so that we may refer to it by a Respondent's number.

Mr. Stewart: I am showing it to him for the purpose of letting him refresh his recollection.

Trial Examiner Norwood: You may see the letter when he is through with it, and then you may have it marked, if you want it marked.

The Witness: What was the question, sir?

By Mr. Stewart:

Q. Having looked at that document—

Mr. Stewart: Will you sit down just a moment, please, Mr. MacIntyre? You will see the paper in due course.

703 Mr. MacIntyre: I ask for a voir dire before the the witness answers that question, since he has looked at a piece of paper. I have a right to a voir dire question on that.

Trial Examiner Norwood: Go ahead: You may do so.

Mr. MacIntyre: I ask that the paper be marked for identification as a Respondent's exhibit, so that I may voir dire on it, and with certainty for the record.

Mr. Stewart: You can voir dire all you want to about it.

Mr. MacIntyre: Mark this for identification then as a Commission's exhibit.

Trial Examiner Norwood: You may ask him about that paper prior to his refreshing his memory. We will attend to the marking later. Go ahead.

Mr. MacIntyre: Mr. Booth, referring to this paper that Mr. Stewart has just asked you to look at and refresh your memory and recollection from, did you write that paper, or have anything to do with the writing of it?

The Witness: No, sir.

Trial Examiner Norwood: Did you receive it?

The Witness: I did receive this letter, but not this particular piece of paper.

Trial Examiner Norwood: You received the letter 704 of which this is a copy?

The Witness: Yes, sir, this is a carbon copy of a letter written to me.

Mr. MacIntyre: Did you confirm any of the facts, the alleged facts, set forth in the letter as written to you by Mr. Quinn?

The Witness: Well, I don't know that I—

Mr. Stewart: Listen to that question, please, Mr. Booth.

Mr. MacIntyre: Let the reporter read the question.

Trial Examiner Norwood: Read it.

(Question read.)

Trial Examiner Norwood: Answer that.

The Witness: Did I confirm them?

Trial Examiner Norwood: Verify, check them.

Do you know them to be true? Did you at one time know them to be true?

The Witness: I can't honestly answer it, sir.

Trial Examiner Norwood: Let me see the letter.

(Letter handed to Trial Examiner.)

The Witness: Because it says that he thought the services were discontinued sometime ago. I don't know whether it was before that letter or after. I don't know when it was.

705 Mr. MacIntyre: If the witness is attempting to refresh his memory and recollection from something that somebody else wrote about which he doesn't know, then I object to any answer to the question.

Trial Examiner Norwood: Do you recall receiving this and acting on it in any way?

The Witness: I remember seeing it, yes, sir, before today.

Trial Examiner Norwood: Did you act on it in any way?

The Witness: I presume I did. I couldn't answer you truthfully.

By Mr. Stewart:

Q. Mr. Booth, directing your attention to the last paragraph of the letter in which Mr. Quinn states that he understood that that was the last payment to Donnelly for his services as a traffic expert, I assume, on behalf of the Association, do you know of your own knowledge whether after that Donnelly's services for the Association were terminated?

A. I couldn't tell you as to the time, whether it was before this letter or after, but I knew that his services were dispensed with.

Q. Let me ask you this: The letter suggests that you prepared the checks.

Mr. MacIntyre: Yes, but the witness didn't write 706 the letter.

Trial Examiner Norwood: I think you had better take that letter.

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By Mr. Stewart:

Q. Did you prepare the checks in payment of Donnelly's services as a freight rate expert on behalf of the association?

A. Not personally, no, sir, our office did.

Q. Well, all right, did you handle them?

A. Not personally. Our Treasurer handled the financial matters.

Mr. Stewart: Now, Mr. MacIntyre, will you please produce Exhibit 476 and the accompanying documents. Mr. King what were those other documents?

Mr. King: 398 and 399.

Mr. MacIntyre: I don't believe we have those documents. I believe the Official Reporter has them.

Trial Examiner Norwood: They were received day before yesterday.

Mr. Stewart: He had them this morning and used them.

Mr. MacIntyre: I beg your pardon, we do have it here. I just located it. Which ones do you want?

Mr. Stewart: 476 please.

Trial Examiner Norwood: With the accompanying 707 documents.

Mr. Stewart: Well, I have copies.

Mr. MacIntyre: Here is 476 as received in evidence.

(Document handed to counsel.)

Mr. Stewart: I am wrong. 492 is the one I want.

(Exhibit 476 was returned to Mr. MacIntyre.)

By Mr. Stewart:

Q. Mr. Booth, directing your attention to Exhibit 492, about which inquiry was made this morning of you, I just want to make sure that the record is clear that so far as you recall that was a matter which you did not take up with Mr. Donnelly?

A. No, I think the reply I quoted came from the manufacturer.

Mr. King: I didn't hear the reply. May I have it read please?

Trial Examiner Norwood: Read the reply.

(Reply read.)

By Mr. Stewart:

Q. Directing your attention to the closed transaction inquiries, what, if anything, was done with reference to

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penalizing or in any way punishing a manufacturer with reference to closed transactions? Was there any penalty of any kind imposed by anybody?

708 Mr. MacIntyre: Just a moment. I object to the use of such characterizations in connection with the question to this witness under these circumstances. I think they can be avoided and I believe that it is harmful for them to be used in the manner that they are in this question.

Trial Examiner Norwood: Well, I think that you better direct your questions to his knowledge and lay the groundwork for any question like that. I think that is rather broad. I will sustain the objection. Qualify him as to his knowledge.

By Mr. Stewart:

Q. The closed transaction inquiry came to you in the form of a request, a written request; is that correct?

A. Yes, sir.

Q. And when you obtained the information, what was done with it?

A. A reply was sent back to the member who made the inquiry giving him the information we had developed.

Q. And generally what did that inquiry over the period you are familiar with the replies, develop from the standpoint of price cutting?

Mr. MacIntyre: May I have that question again?

Trial Examiner Norwood: Read the question.

(Question read.)

709 Mr. MacIntyre: I object to the question because of its generalties and calling for conclusions of the witness rather than facts.

Trial Examiner Norwood: I think you will have to bring out facts here within the knowledge of this witness. I will sustain the objection.

By Mr. Stewart:

Q. Mr. Booth, I show you a document marked Exhibit 533A and B, which purports to be a photostatic copy of a document, the original of which is in my possession in Pittsburgh at present, and ask you to look at it and tell me whether or not you ever saw the original of that document anywhere?

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Trial Examiner Norwood: Did you look at both of them?

The Witness: I thought they were the same.

Trial Examiner Norwood: Can you answer the question now?

The Witness: I don't know whether it was the original of this that I saw of these papers or not, but I have seen them before.

By Mr. Stewart:

Q. Have you seen them?

A. Yes, sir.

Q. Where did you see them, or see it, or papers like those?

A. They were left in Mr. Blake's office on a table following a conference between, I think, a committee of
710 the Association, and some of the members of the Board, and Mr. Blake, prior to the signing of the contract with the Organization Service Corporation.

Q. With reference to a date, can you fix that? Was it prior to November 1, 1936, or about that time?

A. I would think it was before that.

Q. You mean before the date of the contract?

A. Yes, because I think the effective date of the contract was November 1.

Q. Was that document, or the document you saw, which purported to be a copy of it on Mr. Blake's desk, prepared by Mr. Blake?

A. No, sir.

Mr. MacIntyre: Just a moment. Did you get an answer to that?

Trial Examiner Norwood: Yes, he said "No, sir".

Mr. MacIntyre: The witness is now endeavoring to speak of his own knowledge that Blake did not prepare this?

Trial Examiner Norwood: You may examine him on that later. He said that he didn't prepare it.

By Mr. Stewart:

Q. Now, Mr. Booth, I would like to just get one more figure clear. As I understood you, after November of 1938, November 1, 1938, at which date, as I under-
711 stood you, the contract between Rigid Steel Conduit Association and Organization Service Corporation

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terminated, I think you said something about the services of your organization being nominal. Was that the term you used?

A. Yes, sir.

Q. And do you remember what compensation you received for those services, after the date of the expiration of the contract? Do you remember what compensation?

A. You mean that Organization Service Corporation received?

Q. I mean Organization Service Corporation.

(No answer.)

Q. Well, if you don't remember, just say so.

A. If I were to say what I think, it would run a hundred and fifty dollars a month.

Q. Well, now, what were the exact duties which were performed after that date?

A. Only collected statistical data as to shipments and sent that out in the same form as we did before, nothing else.

712 By Mr. Stewart:

Q. Now, you served as secretary pro tem of the meetings, according to the minutes, over what period of the minutes; do you recall who was the secretary during that time?

A. Walker.

Q. That is Mr. H. S.?

A. H. S. Walker.

Q. Now, then, during the period in which you were actually the secretary, you recorded the minutes yourself?

A. I did before that.

Q. Oh, did you?

A. Yes.

Q. Before that?

A. Yes.

Q. And do the minutes, during the period you attended the meetings, and recorded them, truly record what took place at the meetings?

A. Yes, sir. I think I answered that same question this morning.

Q. Now, I wanted to ask it of you. Mr. Booth, I show you Commission's Exhibit 496, and ask if you can offer any additional explanation for that report, as shown on that document?

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A. May I have the question again, please.

Trial Examiner Norwood: Read the question.

713 (Question read.)

By Mr. Stewart:

Q. I mean in addition to that which you made this morning on direct examination, is there any further explanation to be made?

A. I do not think I know what you—

Q. Well, was that the usual practice, or was that occasional?

A. If my recollection is correct, that was not done every month, if that is what you mean.

Q. Well, that is what I am trying to get.

Mr. Stewart: That is all.

By Mr. Robison:

Q. I have just a few questions Mr. Examiner, of this witness.

Trial Examiner Norwood: Proceed.

By Mr. Robison:

Q. Is this Commission's Exhibit 496, that has just been shown to you, Mr. Booth, in referring to a percentage of tonnage shipped, did that refer to the total tonnage in the whole industry or the percentage of the tonnage that was reported to you, or what was the basis to which the percentage applied?

A. It was the tonnage as reported by all the figures which came into my office.

Q. And in order to get those figures, did you in-

714 quire concerning tonnage shipped by manufacturers of Rigid Steel Conduit, who were not members of the Association, or not?

A. We were furnished tonnage figures.

Trial Examiner Norwood: By non-members?

The Witness: By non-members.

By Mr. Robison:

Q. Was that done at your request? By that, I mean the request of the Association?

A. Yes, sir.

Trial Examiner Norwood: Well, is that percentage of capacity or what?

Mr. Robison: No, it says "shipped."

The Witness: No, sir, the—do you wish me to explain this, as far as I know?

Trial Examiner Norwood: Yes, sir.

The Witness: Conduit was sold by what they call a card which had a number, and on occasion we would be asked to ascertain what proportion of a current month's shipments were made on the then current card. It might be this number, or it might be some other, simply trying to find out, I presume, how they were cleaning up back log.

Trial Examiner Norwood: Percentage of total shipments sold at a given price; is that it?

The Witness: Yes.

715 Mr. Robison: I beg your pardon. Not sold. It was shipped, was it not?

The Witness: Shipped.

By Mr. Robison:

Q. And in answering my question as to whether it was not shipped, you have in mind that shipments during a current period may have been made on account of contracts made as of an earlier period?

A. Yes, sir.

Q. Now, if during any particular current period shipments were made on consignments, then such shipments would not be reflected in your total, concerning which you stated a percentage, because there would, at that time, be no price?

Mr. MacIntyre: Now, just a moment. I do not know that it is necessary to ask the witness to confirm such testimony as that. He can ask a witness what the facts are.

Trial Examiner Norwood: The objection is sustained. Please do not lead the witness.

By Mr. Robison:

Q. Mr. Booth, in case conduit was shipped by a manufacturer of conduit to his distributor agent on consignment, would the amount of conduit so shipped be included in the total amount shipped, concerning which you stated a percentage sold at a particular current price?

716 A. Not until delivered out of the consigned stock by the agent.

Q. Now, this morning, Mr. Booth, you were led, in answer to a question asked you by Mr. MacIntyre, to make

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what seemed to me a very general statement concerning the reporting to you of specific building job contracts, to the effect that so far as you knew, all specific building job contracts currently being made, were reported to you.

Now, what I want to ask you is this: in so answering that question, did you intend in any way to modify your previous statement that Youngstown Sheet & Tube Company did not report any specific building job contracts to you, or your organization, or the Association, and did not request any investigation of any of these contracts?

A. Oh, I thought I answered that this morning, but perhaps I did not.

Q. I just want to confirm, I want to find out whether, your later answer in general to the effect that so far as you know, all contracts were reported to you, was intended by you to modify your previous statement that Youngstown Sheet & Tube Company did not report such contracts?

A. No, because I did not think that they were included in the question.

Q. Now, Mr. MacIntyre, will you let me have, please, exhibits, Commission's Exhibits 490, 491, 519 and 520?

717 (Mr. MacIntyre gives the exhibits referred to to Mr. Robison.)

By Mr. Robison:

Q. Mr. Booth, will you look at the papers that have been introduced here as Commission's Exhibits 519-A to D.

I am going to ask in particular about Commission's Exhibit 519-B.

A. (The witness looks at papers referred to.) Yes, sir.

Q. Commission's Exhibit 519-D has been represented here as being in the nature of a memorandum made by you concerning replies received from various manufacturers of conduit named on Commission's Exhibit 519-D to the inquiries which is shown in Commission's Exhibit 519-B; is that in truth the nature of that memorandum?

A. It is a form I might use, but whether it applies to it—

Q. What I want to ask you about it, is this: assuming it is a memorandum of that nature, and I call your attention to the fact that the last item on Commission's Exhibit 519-D is Youngstown "No,": is that any more an indication that you had addressed an inquiry to Youngstown

Sheet & Tube Company and that it had replied to your inquiry?

Mr. MacIntyre: May I have that question?

Trial Examiner Norwood: Read it.

(Question read.)

718 The Witness: Am I to answer it?

Trial Examiner Norwood: Yes.

Mr. Robison: Yes.

A. No. It would only indicate that I had addressed an inquiry to them apparently.

By Mr. Robison:

Q. And that they had replied to it?

A. I would say so, yes, sir.

Trial Examiner Norwood: In other words, it does not indicate that they were members; is that the idea?

Mr. Robison: That is it.

Trial Examiner Norwood: Yes.

By Mr. Robison:

Q. I show you Commission's Exhibits 520-A to C, attached to which, I mean included in which is Commission's Exhibit 520-C is a somewhat similar memorandum, which has been represented here to be of the same nature that I referred to regarding Commission's Exhibit 519-D.

I ask the same question regarding that exhibit, Commission's Exhibit 520-C, as to whether that indicates, in connection with the other papers to which it is attached, anything more than that you had addressed an inquiry to Youngstown Sheet & Tube Company, and that that company had replied to it?

A. That is all, sir.

719 Q. I show you Commission's Exhibit 490, Mr. Booth, which appears to be a closed transaction inquiry, and in order that we may understand what it represents, I ask you first whether what appears on this paper to have been printed in a form resembling typewriting, and what appears to have been typewritten or otherwise inscribed thereon, in purple ink, did not together constitute an inquiry sent out by Rigid Steel Conduit Association to some one or more persons?

In asking the question, I am distinguishing between what I call the printed black, and the purple, and the black typed part, which appears where I have indicated.

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A. The question is what?

Trial Examiner Norwood: Read it.

(Question read.)

The Witness: The question is so far away from the end. Would you mind reading the question part again?

(Question read as requested.)

A. The answer is yes.

By Mr. Robison:

Q. And the part that I have referred to in my previous question as having previously been typed on the paper in black ink, reading: "Not Youngstown H. S. C. 7/6," was that in the nature—does that represent a reply re-

720 ceived to the inquiry?

A. Yes, sir.

Q. And does the paper, taken as a whole, indicate anything more than that the inquiry shown on it was sent to the Youngstown Sheet & Tube Company, and that company replied?

A. No, sir.

Q. As shown?

A. No, sir.

Q. Now, I show you Commission's Exhibit 491-M, which seems to be another inquiry on its face, not appearing to have been addressed to anybody in particular, and to contain on its bottom a reply in black typewriting, bearing a typed name, The Youngstown Sheet & Tube Company; I ask you the same question regarding that exhibit, whether that represents anything more than an inquiry sent by you to Youngstown Sheet & Tube Company and the reply to it?

A. No, sir.

Mr. Robison: That is all I have to ask, Mr. Examiner.

Trial Examiner Norwood: Is there any further cross-examination?

Mr. Austin: I have one more question, please.

Trial Examiner Norwood: Go ahead.

722 Mr. King: Mr. Peyser was unable to be here this afternoon, and asked me if I would ask the witness on cross-examination two questions.

Trial Examiner Norwood: Go ahead.

By Mr. King:

Q. Were any investigations of specific job contracts made by you or the Organization Service Corporation on behalf of the M. B. Austin Company?

A. No.

Q. Were any requests from the M. B. Austin Company made to you in connection with whether particular dealers—I am sorry, I have difficulty in reading Mr. Peyser's writing. Strike the question and I will repeat it. I think I understand it now.

Were any requests from M. B. Austin Company made to you at any time as to whether or not any particular dealers were wholesalers?

A. Not that I recall.

Trial Examiner Norwood: They did not request any investigation to determine that?

The Witness: I didn't know them as a manufacturer of conduits, I thought they were distributors.

Mr. Stewart: One more question.

By Mr. Stewart:

Q. Mr. Booth, will you give us your best recollec-
723 tion as to the number of manufacturers who followed the suggested form of consigned stock contracts and those who did not. What is your best recollection?

Trial Examiner Norwood: Do you know about that?

The Witness: I knew some who didn't.

By Mr. Stewart:

Q. Well, name them, then.

A. Clayton Mark did not. Laclede did not. You are talking about manufacturers or members?

Q. Sir?

A. You are talking about manufacturers or members?

Q. I am talking about members to begin with?

A. General Electric did not.

Q. What about Central Tube, do you remember what it did?

A. As I remember they already had a consigned stock agreement, and I think they incorporated one clause. I don't remember what it was, but I think that was true. I don't think that Fretz-Moon used it because I think they had their own.

Q. Well, didn't all—I am sorry, have you finished?

A. Of members, yes, I think so.

Q. Now, as a matter of fact, did not most all the companies have a form of consigned stock contract of their own prior to the time you and Mr. Blake worked on the new form?

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724 A. I think several of them did, sir, because we had copies come in from which we picked different paragraphs to build into this other one, as they might apply.

Trial Examiner Norwood: It was after you got up this composite contract that you refer to as these other companies not having adopted it?

The Witness: Yes, sir.

By Mr. Stewart:

Q. In what manner was the form of contract submitted to the particular manufacturer for adoption or not? Was it an individual matter, or how was that done?

Mr. MacIntyre: If your Honor please, I object.

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. MacIntyre: He is asking this witness to interpret whether or not it was a collective activity or an individual matter. The facts speak for themselves.

Trial Examiner Norwood: I think he has already told you the answer to this question as to how he sent these out, whether he sent them out to the individuals, and they had the choice of adopting it, or leaving it alone. I think he already told us that.

Mr. Stewart: If that is clear, all right.

Trial Examiner Norwood: That is the case, is it not?

725 The Witness: Yes, sir.

Mr. Stewart: That is all.

Mr. King: I have one other question.

Trial Examiner Norwood: Very well.

By Mr. King:

Q. Mr. Booth, I show you Commission's Exhibits 398 and 399, which are photostats of letters, and ask you that you look at them.

(Documents handed to the witness.)

Q. Have you examined them?

A. Yes, I saw them this morning.

Q. Does not Exhibit 398 relate to a mistake in a freight tariff?

A. That is my interpretation, sir, yes, sir.

Trial Examiner Norwood: Is that all?

Mr. King: That is all I have, sir.

Trial Examiner Norwood: Examine him.

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Redirect Examination by Mr. MacIntyre.

Q. Mr. Booth, Mr. Stewart asked you a few minutes ago a question, the substance of which was whether or not these firms, these conduit manufacturers, to whom you or the Organization Service Corporation sent these consigned stock forms agreements, or forms for agreements, whether they had the freedom, individual freedom, of adopting
726 them or not. Do you recall that question?

A. Yes, sir.

Q. You said that they could individually adopt them. I will ask you, did you mean by that answer that they were not under some compulsion of penalty if they did not adopt, or just what did you mean by "freedom"?

A. I meant they could do just as they pleased. If they didn't have an agreement and wanted to use that one they could use it. If they didn't have an agreement and didn't want to use that one, they could write their own. If they didn't want any agreement and didn't want to use it, they didn't have to.

Q. In other words, they were under no binding contract, written agreement, with the other conduit manufacturers that they had to use the particular one that was sent to them; is that what you mean?

A. Not to my knowledge.

Q. You mean they didn't have such a written contract to force them to use it?

A. Not that I ever heard of.

Trial Examiner Norwood: Is that what you meant by your answer?

The Witness: Yes, sir.

By Mr. MacIntyre:

Q. You meant they never had such an agreement?
727 A. Not so far as I know, and I never heard of one.

Q. That is what you meant by your answer?

A. Yes, sir.

Trial Examiner Norwood: Did you have any oral agreement?

The Witness: Not to my knowledge of any nature or kind.

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By Mr. MacIntyre:

Q. Did you question each of these manufacturers as to whether they had discussed these contracts with each other, as to whether they were going to adopt them or not?

A. I did not, no, sir.

Q. Mr. Robison was asking you about whether or not Youngstown Sheet and Tube had ever asked you to have made for it an investigation of specific job contracts, and whether or not you investigated the contracts for it. You said that you didn't recall.

A. I thought that you asked me this morning.

Q. I didn't ask with respect to Youngstown. Mr. Robison did, however, this afternoon. Do you recall him saying that?

Mr. Robison: Testimony regarding that occurred first this morning, if I may suggest.

A. I don't remember his asking me this afternoon.

By Mr. MacIntyre:

728 Q. You don't recall his asking you?

A. No, sir.

Q. You do recall his asking you that as to whether or not Youngstown had sent in any information, that is, information concerning tonnage of its shipments, do you recall that?

A. Yes, I think he did ask me that question.

Q. And you stated that you didn't recall whether they did or not?

A. No, sir. I think I said they did.

Q. That they did send in material upon which such information was based?

A. Yes, sir. He asked me the question, I think, if figures were included in the total, and I think I said they were.

Q. Now, Mr. Booth, I show you Commission's Exhibit 44. What is that?

A. It was a mailing list which was used in our office by our mail clerk, and if I had a memorandum going to certain people I would check it against whom it was to be mailed.

Q. And did you in that connection send memos and reports and inquiries to those listed on that mailing list?

A. On occasion.

Q. And that is the reason for such mailing list?

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A. Yes, sir, I would say so.

Q. And would you say that that mailing list there was used in connection with requests that you sent to
729 Youngstown Sheet and Tube, and to others for such information as you told Mr. Robison that you secured from them in order to make up your tonnage reports, such as the one he questioned you about?

730 A. I think if there was several members whose figures hadn't come in, I would write a bulletin to those members and check the list and send it out. They might have been on and they might not.

Q. The list would be used in that connection?

A. Yes, sir.

Q. And is that your handwriting, giving the addresses of those different people or different firms?

A. Yes, that was so the clerk could address the proper envelopes.

Q. That is in your handwriting?

A. I think that is my handwriting, in fact, I know it is.

Q. Mr. Austin asked you a short while ago whether or not you had discussed any of your work for the Organization Service Corporation with any of the representatives of the National Electrical Wholesalers Association.

A. Yes, sir.

Q. And you state that you don't recall whether you did or not?

A. I never did. I don't know them.

Q. You have discussed your work, however, with Mr. I. A. Bennett, of the National Electric Products Corporation?

A. Yes, sir.

Q. And did he tell you, when you were holding those discussions with him, that he had not discussed the
731 same matters with representatives of the National Electrical Wholesalers Association?

Mr. Austin: Mr. Examiner, I think that is an objectionable question. It is leading and involves an answer with respect to hearsay.

Trial Examiner Norwood: I think he can lead him at this time.

Mr. Austin: How about the hearsay objection, your Honor?

Trial Examiner Norwood: Objection overruled.

Mr. MacIntyre: May we have the question read?

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Trial Examiner Norwood: Yes.

(Question read.)

Trial Examiner Norwood: Did he tell you anything about it?

The Witness: I don't think he ever told me about it.

By Mr. MacIntyre:

Q. Mr. Stewart was asking you about these specific job contract investigations. You stated to him that the reason that those investigations were made, was for the purpose of preventing fraud, and you explained to him that the fraud you had in mind was that of a buyer securing from one manufacturer, say, 10,000 feet of conduit, for use on a building, or telling the manufacturer from whom
732 he bought it, that he was going to use it on a particular building, and then going to another manufacturer and buying another 10,000 feet and telling that manufacturer that he was going to use it on the same job on which he had already bought 10,000 feet, all that was required on the job.

Is that what you had in mind?

Mr. Stewart: Wait a minute, please. Read that question again.

Trial Examiner Norwood: Read the question.

(Question read.)

A. Well, that was one of the things; yes, sir. But that wasn't the whole thing.

By Mr. MacIntyre:

Q. Is that what you understood to be one of the fraudulent acts that were referred to?

A. I would think that that would come under the classification of a fraudulent act, yes.

Q. That is, that it is your understanding that when a buyer goes to a manufacturer of conduit, and buys 10,000 feet of conduit from him, and tells him he is going to use it somewhere, and it is a fraud for him to secure it from a manufacturer—

Mr. Stewart: Oh, now, that is argumentative. That isn't what the witness said.

Trial Examiner Norwood: I will let the witness
733 explain the situation there, if you are willing.

Mr. Stewart: I am willing.

Mr. Robison: I would be very glad to have him explain it fully.

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Mr. MacIntyre: If your Honor please, I want to elicit from this witness his understanding of this term "fraud" that he has used, and I contend that I have a right to do it by questions. I would like to ask him a few more questions on that.

Trial Examiner Norwood: As the questions go through, he can tell us his complete idea about it.

The Witness: Will you read it again?

(Question read.)

By Mr. MacIntyre:

Q. If he doesn't use it at the place where he said he was going to use it.

A. I would think that that would represent a fraudulent transaction, because he has asked the manufacturer to protect him for that number of feet, or that number of tons during the life of that particular job, and if he uses it otherwise, I think he has made a mis-statement of fact.

Q. If he uses it otherwise, what does the manufacturer lose?

Trial Examiner Norwood: In case of a subsequent rise in price?

734 The Witness: In case of a subsequent rise in price, the contractor would own material which he could use on a job coming up on which other contractors would probably be forced to quote, on the basis of the then market.

By Mr. MacIntyre:

Q. As to that manufacturer's goods, he would be using them on the building if he didn't secure it from any other place to use it on the building anyway, despite the price rise; isn't that true?

A. I don't understand you.

Mr. MacIntyre: Read the question.

(Question read.)

Mr. Stewart: I submit that that is not only argumentative, but unintelligible.

Trial Examiner Norwood: Counsel has stated the case there. You are assuming a contract which protects the contractor in the construction of the one building.

By Mr. MacIntyre:

Q. And if the manufacturer protects him in the construction of one building, and both parties perform on it,

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and there is a subsequent price rise, the manufacturer who protects him under that, whether it is used on that building or not, does not get any more than the contract price for it, does he, Mr. Booth?

735 A. Well, I am a little confused as to the questions.

Q. Let's start all over again. A manufacturer who enters into a contract with a buyer for the sale of 10,000 feet of conduit, for use on a particular building job, can't get any more than the contract price on that, even if a price rise occurs before the job is completed?

A. That is right.

Q. Even though if no other manufacturer has a duplicated contract for the same job?

A. That is right.

Q. And if a duplicated contract should occur as to that job, then the other manufacturer who duplicated it, would be selling the goods under the same condition and at the same price as the manufacturer who did supply it on the job?

Mr. Stewart: Just a moment. I object, for the reason that in the assumed conditions of Mr. McIntyre's question, obviously it would be a violation of the Robinson-Patman Act, which we are all bound to take notice of, and it is not for the witness to explain those problems.

Trial Examiner Norwood: He is assuming a duplication of contracts.

Mr. MacIntyre: I can't see where there would be any violation of the Robinson-Patman Act. I know that is commonly alleged.

736 Trial Examiner Norwood: I think that all this is argument, that you could make, by citing these contracts, and I think you see terms there where this is represented by the buyer to be what is needed and to be what will be used on that one building only, and that there are no other duplications whatsoever, and that the material will not be applied or resold.

Mr. MacIntyre: If your Honor please, when this was on direct examination, I complained that the contract would show what it provided, but this witness was permitted to state that he believed that a duplication of those contracts would constitute fraud. I am attempting now to determine from this witness what his understanding of fraud, as he used it in those terms in his direct examination really means to him.

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737 Trial Examiner Norwood: Explain fully how you understand that this operates as a fraud.

The Witness: Well, maybe my code of ethics is different than most anybody else, but I was brought up to believe and to act according to the precept that if you said you would do a thing you would do just that and nothing else, and if you did anything else, it was a fraud. Now, that is my interpretation of a fraud.

By Mr. MacIntyre:

Q. I am asking you, Mr. Booth, if your interpretation of fraud, as you have there used it, would include a consideration as to whether a manufacturer was damaged in any way through his sale of say ten thousand feet of conduit which were used on some other job than that which he first thought it might be used on?

A. I do not know whether he would be damaged or not, sir.

Q. Well, you gave us some indication a few minutes ago you thought probably there would be some damage if there had been a price rise. Do you still believe that there would be a damage in that direction?

Mr. Stewart: Well, I submit that that is still arguing. We are arguing again, and I do not think the witness should be required to answer a question of that sort.

Trial Examiner Norwood: Let him answer it.

Mr. Stewart: If he knows.

738 Trial Examiner Norwood: Can you answer that?

The Witness: I do not really know.

By Mr. MacIntyre:

Q. Well, can you think of any other way than that as to its effect on price that the manufacturer could be affected by a duplication of contracts?

A. Will you say that again, please?

Mr. MacIntyre: Please read the question.

(Question read.)

Trial Examiner Norwood: Answer the question, if you can, and if you cannot, say no.

The Witness: I do not know the answer to it.

By Mr. MacIntyre:

Q. You do not know of any other way in which a manufacturer—

Mr. Stewart: No, no.

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The Witness: I did not say that, I did not know any other answer.

By Mr. McIntyre:

Q. Mr. Stewart showed you this document, Commission's Exhibit 533A and B, and I believe you told him that you first saw that at about November 1st, 1936, when it was left with Mr. Blake in his office on a table following on a conference of a committee of the association and some of the members of the Board.

739 A. That is my recollection.

Q. Now, who left it on the table?

A. I could not say, sir. There were about six men in the room, if I remember it.

Q. Who were those men?

A. Well, it is a matter of minute record. I do not know that I can—I know that Walker was there, and Mr. Bennett, I could not be sure of some others.

Q. Mr. Blake was present?

A. Yes, and myself.

Q. The four of you were there, and who else?

A. I could not honestly tell you who the other two men were, sir.

Q. In other words, all you can recall, sir, were there at that time were Mr. Bennett, that is Mr. I. A. Bennett of the National Electric Products Corporation, Mr. H. S. Walker of Walker Brothers?

A. There were some others there, but I do not know for sure who they were.

Q. Mr. Herbert S. Blake?

A. Senior.

Q. And yourself?

A. Myself, yes.

Q. You say this was placed on a table following a meeting or a conference of the committee?

740 A. I said left on a table.

Q. Following a conference of a committee of the association, you mean of the Rigid Steel Conduit Association?

A. That is right, sir.

Q. And some members of the Board. What Board do you have reference to?

A. The Board of Directors of the Association.

Q. Of the Rigid Steel Conduit Association?

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A. There was apparently a committee, Mr. MacIntyre, who were to wait on Mr. Blake and discuss the terms of a contract. That was the meeting I refer to.

Q. Now, you told Mr. Stewart in this connection that Mr. Blake did not prepare this document. How do you know that he did not?

A. I have a very peculiar reason, sir. I never heard Mr. Blake or saw him use the word "counsellor".

Q. That is the only thing that you base your statement upon that Mr. Blake did not prepare this?

A. I am sure he did not because I never saw him or heard him use the word "counsellor".

Q. And say that you do not believe he prepared this because of the use of that term in the document?

A. Yes.

Q. Do you have any other reason for believing it?

Trial Examiner Norwood: What was that word?

741 The Witness: "Counsellor".

By Mr. MacIntyre:

Q. Do you have any other reason for believing that Mr. Blake did not prepare it?

A. Because in a discussion that I think—I am trying to recall that meeting. To the best of my knowledge I think that certain questions or suggestions were made to Mr. Blake as to the things which he should do in that operation of the association when, and if, a contract was signed.

Q. Made by whom?

A. I could not say, sir. There was a discussion around the table. I do not know, but I am positive that this was left on the table there when the meeting was over.

Q. Now, let us go back to the question I asked you. You said that you did not believe that Mr. Blake prepared that because of the word "counsellor" appears in it. Now, I will repeat my question: Is there any other reason that leads you to believe that Mr. Blake did not prepare it?

A. I would think perhaps because this penciled notation which I cannot read, I do not know whose writing it is.

Q. Why would that lead you to believe that Mr. Blake did not prepare it?

A. I do not know that it would. I said unless it was that.

Q. Well, why would that come into my question to you? Whether or not Mr. Blake prepared this docu-

742 ment?

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A. Because it, as nearly as I can read it, it does not look like his writing.

Q. I am talking about the preparation of the typed material that is on there now, rather than the written material, not the handwriting?

A. I cannot tell you, sir. I do not know.

Q. Do you have any other reason than the word "counsellor" appearing at the top of the first sheet as to believing that Mr. Blake did not write the typewritten material therein?

A. I cannot tell you, sir. I do not know.

Q. In other words, you have no other reason for believing that Mr. Blake did not write it?

A. It does not sound like it.

Q. What do you mean, it does not sound like it?

A. Sound like his phraseology. Here is a sentence in here—well, I suppose a man might write that.

Q. You suppose that Mr. Blake would write it that way?

A. I say, I suppose a man might write it that way. I did not say Mr. Blake.

Q. Any man you say?

A. A man, yes. I do not believe he wrote it, sir.

Q. And your reason for not believing he wrote it is because it has got the word "counsellor" at the top of the
743 first page, is that true?

A. Yes.

Q. And why do you believe that he did not write it because it has got the word "counsellor" at the top of the first page. What does that have to do with your belief that he did not write it?

A. Because I never heard him use the word.

Q. You never heard Mr. Blake use the word "counsellor"?

A. "Counsellor", no, sir.

Q. And the simple fact that that appears at the top of the first page here would lead you to believe that Mr. Blake did not write this document, is that clear?

A. That would make me believe it.

Q. And you have no other reason for believing that he did not write it?

Mr. Robison: I object.

Trial Examiner Norwood: No.

By Mr. MacIntyre:

Q. And you have no other reason for believing that he did not write it?

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Mr. Robison: I object.

Trial Examiner Norwood: Yes.

Mr. Robison: He has not said so. If he wishes to know whether he has any other reasons, he should so ask him.

744 Trial Examiner Norwood: Have you any other reason?

The Witness: I do not believe I have, but if Mr. Blake had written that I would have seen it, and it would have been discussed with me before the meeting, and I know it was not.

By Mr. MacIntyre:

Q. How come you to say that, Mr. Booth?

A. (No response.)

Q. Why do you believe that Mr. Blake would discuss anything that he writes with you before a meeting?

A. Well, that has been more or less his custom in the work I have been doing with him.

Q. That is, he has discussed with you everything that he has written to any of these people for whom he has worked before he has prepared it and transmitted it?

A. Not unless I was associated with that particular branch of work. I do not mean that I am his counsel and adviser, sir.

Q. Mr. Booth, I now show you Commission's Exhibit 538A and B. Did Mr. Blake discuss that document with you before he sent that to the members of the industry?

(There is a pause.)

Mr. MacIntyre: Please read the question to the witness.

745 Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Answer the question. Did he?

746 A. I would think that we had some discussion about it, sir, yes.

Trial Examiner Norwood: Do you have any recollection of it?

The Witness: I remember the circumstances of a man calling on him, but I do not know who it was. He sat down and talked about it, and this memorandum apparently came out as a consequence of that conversation.

Trial Examiner Norwood: Do you remember the circumstances of Mr. Blake discussing it with you?

The Witness: Yes, sir.

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By Mr. MacIntyre:

Q. I now show you Commission's Exhibits 576-A to E, and will ask you if Mr. Blake discussed that document with you before he completed his preparation at, or any time before he mailed it to the members of the industry, or to the persons to whom it is addressed?

Mr. Houston: Will the record show a correction there? It was not mailed to the members of the industry, as I recall. It was addressed personally to Mr. Bennett, and that is the one to which exception was taken.

Trial Examiner Norwood: Yes.

Mr. Stewart: I submit that really this is not fair, because after all, the witness has not said that Mr. Blake discussed every letter he ever wrote to anybody. He said
747 he generally discussed it with him, documents in connection with the particular industry.

Now, that letter is a personal letter from Mr. Blake.

Trial Examiner Norwood: Oh, well, he can tell us.

Mr. Stewart: I know, but this could go on for the night.

Trial Examiner Norwood: Counsel's question has been objected to on the ground that it makes assumptions with respect to the letter there, but they are not borne out.

Mr. MacIntyre: I qualified my question at the end of it, as to the person to whom it is addressed.

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. MacIntyre: It seems that some people around the table may not have heard the last part of my question.

(Question read.)

Trial Examiner Norwood: How was that objection, Mr. Houston?

Mr. Houston: Well, I may have misunderstood Mr. MacIntyre; he implied at first—if he does not mean it was mailed to members of the industry, I withdraw my objection.

748 Trial Examiner Norwood: Answer the question.

The Witness: I think I was in his office when the thing was dictated.

By Mr. MacIntyre:

Q. Did he discuss that with you?

A. Not paragraph by paragraph; no, sir.

Q. Well, can you point out to us the parts that he did not discuss?

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A. I could not. I remember I was talking with him as he dictated, and he stopped to go out. I was in his office, I am quite sure, sir.

Q. Now, as to Commission's Exhibit 496, the one that carries your statement that a certain percent of shipments of conduit made during the summer of 1937, was made on card 76, Mr. Robison asked you if that could have been included in shipments made on contracts made prior to that. Do you recall that question? And you replied that it could have; do you recall?

A. Not that—

Mr. Robison: Mr. Examiner, I think that Mr. MacIntyre has misstated the prior evidence both as to my question and as to the witness' answer. For the purpose of reference to shipments made under previous contracts was for an entirely different purpose, and brought out an entirely different state of facts than that indicated by the present
749 question.

Mr. MacIntyre: Reference is made in the same question to this exhibit, though, and what the exhibit shows.

Mr. Robison: If I may remind you, Mr. Examiner, you have addressed to the witness a question which had reference to sales during the month, and I pointed out that the exhibit under discussion had reference to the shipments during the month.

Trial Examiner Norwood: Read Mr. MacIntyre's question.

(Question read.)

Trial Examiner Norwood: The objection is overruled. That is my recollection. Do you remember that?

The Witness: I do not remember that question, no, sir.

Trial Examiner Norwood: Well, is that the fact, that those figures included shipments on contracts?

The Witness: Yes, they included shipments on contracts, but I do not know what month they were made in, sir.

By Mr. MacIntyre:

Q. Now, I will ask you, Mr. Booth, if you have, in all of your experience with the Rigid Steel Conduit Industry,
750 ever known of a shipment made subsequent to the time a contract was entered into, to be made at a price greater than the price specified in the contract?

A. I do not think I ever had.

Q. Is it your understanding then, that if shipments made in this month, as shown by that exhibit, and as being

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equal to the prices shown on and for which charges were made at prices equal to prices shown on card 76, that the contracts entered into specified prices that are below the price named in card 76?

A. I do not understand that question.

Mr. Robison: I do not think that is a complete question.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Do you understand that question?

The Witness: No, sir.

Mr. MacIntyre: I will try to make it shorter.

Trial Examiner Norwood: I will ask counsel to reframe it.

By Mr. MacIntyre:

Q. Do we then understand, Mr. Booth, that if your reports as to prices at which shipments were made during the month in question, shown on exhibit, Commission's Ex-
751 hibit 496, as having been included in contracts entered into prior thereto, that prices then specified in such contracts were at or below the prices specified in card 76?

A. Will you read it to me again, please?

(Question read.)

Trial Examiner Norwood: Do you understand that?

The Witness: I think I do. If the shipments in that month which reflects card 76, total the percentage which I have not in my mind,—they might include a specific building job contract taken at that price, card 76.

By Mr. MacIntyre:

Q. Or below that price?

A. And the balance of the tonnage, whatever the percentage is between them and a hundred per cent, would have been shipments made on business placed at a card lower than 76, probably over a period of time back, or they might have been done on the day before; I don't know.

Q. But none could have been made above card 76?

A. I do not think so, sir. I am sorry I was so dense.

Q. Mr. Stewart inquired of you as to the nature of inquiries which you received from some people about freight rates, and about which you later corresponded with Mr. Donnelly, and you stated it related to some communications from some people as to what they thought were errors
752 in freight rates. Do you recall that?

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Mr. Stewart: I do not think I asked the question. I do not know who did, but I do not think I did.

Mr. MacIntyre: It was either you or Mr. King.

Mr. King: It certainly was not me, if your Honor please.

Mr. MacIntyre: Well, the record will show that the question was asked by one of the battalion over there; I do not know which one.

Trial Examiner Norwood: Well, so reframe your question, then.

By Mr. MacIntyre:

Q. Well, do you recall the question having been asked you by counsel for Respondents?

A. I think so.

Q. Now, I will ask you if you can name some of those people who made such complaints to you about errors in freight rates.

A. Well, one of them was the exhibit which you showed me, which was quite marked; that is fresh in my mind because I have just seen it. There probably were others, maybe there are, or maybe only a few, but I could not tell you the names. If I had not seen that this morning, I would not have known that they had.

753 Q. And when you received such communications from members of the industry, you then passed them on to Mr. Donnelly?

A. Presumably, for correction in his published sheet.

Q. You told Mr. Stewart you knew that Mr. Donnelly's services had been discontinued as of a certain period of time, or that you knew that they had been discontinued?

A. I was not sure of the time.

Q. I believe you said you could not tell us exactly.

Mr. Stewart: That is by the Association, Mr. MacIntyre. I think you ought to add that. That is the question I asked.

By Mr. MacIntyre:

Q. Now, how do you know that Mr. Donnelly and the Rigid Steel Conduit Association came to the parting of the ways at any time?

A. Because there was some kind of a rumpus, it not having apparently been clearly understood that Donnelly had been hired on some kind of a retainer fee, and probably before our association with him, because I think he worked for them before that, to either keep up to date changes in the tariffs as they were published by the Interstate Com-

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merce Commission, or the railroads, and I think they had to be filed or authenticated by the Interstate Commerce Commission before they become effective, and when
754 they found out that that arrangement had been made, bills were coming in periodically for that service, they said "That is out the window," and "any company who wants to avail themselves of Donnelly's service, can make their own arrangements." That is why I know that his services were terminated.

Q. Who had hired Mr. Donnelly that led to the rumpus about which you speak?

A. I do not know that I could tell you from my own knowledge. I could tell you from hearsay.

Q. Well, is this rumpus about which you have told us, a matter of hearsay? How did you learn that?

A. That is where I left, the place where I heard who had supposedly hired Donnelly. I did not know it before.

Q. Somebody told you that there had been a rumpus, then; is that correct?

A. No. I think I was there when some part of the rumpus occurred; maybe part of it occurred before I was there.

Q. Between whom did the rumpus occur?

A. I do not know whether two people could make a rumpus, or whether you have to have a lot of others.

Q. Well, I am just talking about this one that you began to tell us about.

A. I do not know who else might have been there, but I rather think that Major Quinn was one of them. I
755 don't know who the others might be, whether the man that was supposed to have done the hiring was there at the time, or it was between Mr. Quinn and somebody around there, who were around, that's why it was done, or why it should have been done; I don't know.

Q. Was Mr. Donnelly present?

A. No, sir, I never saw Mr. Donnelly at any meeting we ever had.

Q. It was a rumpus with Donnelly, that Donnelly was not there; is that correct?

A. It was a rumpus about Donnelly, I would say.

Q. But not with Mr. Donnelly?

A. No, sir.

Q. And how do you know that the services with Mr. Donnelly in the name of the Association were at any time discontinued?

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A. I think I was instructed to notify him his services were terminated.

Q. How?

A. I think I was notified or told to do so. I think that is a matter of minute record.

Mr. MacIntyre: I would like to ask Mr. Stewart to produce the document that he handed to the witness this morning, that I asked to be marked for identification at the
756 time, as something from which the witness was refreshing his memory and recollection, or at least he was asked to refresh his memory and recollection from it.

Mr. King: Mr. Examiner—

Mr. Stewart: Excuse me, Mr. King. Since I am the victim—

Mr. King: Go ahead.

Mr. Stewart: —as I recall it, it ended up by the witness saying he could not refresh his recollection, and you stopped me from going any further with the matter, and I decline to produce the paper.

Mr. MacIntyre: At least the witness looked at the document and the document contained certain statements, and Mr. Stewart—

Trial Examiner Norwood: He examined it and made some statement based thereon. I think counsel should let him have it.

Mr. Stewart: You advise me to produce it?

Trial Examiner Norwood: I think you should.

Mr. King: In due deference to your Honor, I would like to call your attention to the fact there has been a ruling heretofore made by your Honor in this case, prior to this time, exactly on a similar situation, where your Honor refused to let counsel look at the documents involved.
757 Trial Examiner Norwood: No. My recollection is a little different, Mr. King. I ruled the papers would not be available unless the witness had refreshed his memory from them while giving his testimony.

Mr. King: He refreshed his recollection just before he got on the stand.

Trial Examiner Norwood: Yes, that is right. He did not bring them into the hearing, or anywhere around the hearing.

Mr. King: His testimony was that Mr. MacIntyre had the document in front of him, that I wanted to look at, and that he had refreshed his recollection before taking the stand.

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Trial Examiner Norwood: Prior to his getting on the stand. I do not recall exactly that—I think he said the day before, or something like that, but it may have been as you say, but I hardly think so. Anyway, if he did not use it on the stand, I will leave it open for you to go to the Commission to get the papers. Those demands have been carried too far in hearings before the Commission.

Mr. MacIntyre: I would like to have this paper marked for identification.

Mr. Stewart: Now, since counsel apparently is going to endeavor to take the paper out of my possession, I
758 do submit he has no right to do that. He may read it into the record if he wants to, but that is my document, used for a particular purpose. I submit it has no place in the record until I put it in.

Trial Examiner Norwood: Well, if counsel wants to get some information from those papers, why, he may do so, and then he may ask this witness some questions, but I will ask him to return it to counsel.

Mr. MacIntyre: I want to have the document marked for identification.

Trial Examiner Norwood: Well, you objected to his using it to refresh his memory. You examined him on the voir dire, and we finally determined that it did not refresh his memory, so I think that the best way to do that is to hand it back to counsel after you have gotten the information out of it you wanted.

Mr. MacIntyre: All right. I return the document to Mr. Stewart under those circumstances.

I claim it a right, as well as a privilege of having it marked for identification; however, that is any document that I care to, which I feel is relevant and material to any of the issues here.

Trial Examiner Norwood: You can give Mr. Stewart a subpoena duces tecum for it.

759 Mr. MacIntyre: I want to note for the record that the letter in question is a letter which this witness this morning has emphasized as one that he received, or at least this document is a carbon copy of a letter which he received from L. R. Quinn, Treasurer, of the Rigid Steel Conduit Association, under date of November 2, 1937, addressed to R. S. Booth, Organization Service Corporation, 74 Trinity Place, New York City, and I am returning the document to Mr. Stewart.

Trial Examiner Norwood: Proceed.

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By Mr. MacIntyre:

Q. Mr. Booth, Mr. Stewart asked you about the destruction of all these papers about which you have testified in the offices of the Organization Service Corporation, and you told him when you thought you had destroyed them, about the period of time you thought you were making the destruction of them. In that connection he asked you about an interview that you had or some visit that you had had from Mr. Frascati, an investigator for the Federal Trade Commission which you recall as having occurred sometime during August or July of 1937. Do you recall that?

A. Yes, sir.

Mr. Stewart: You mean you are asking him now does he recall. That is what I asked him, the interview with Frascati, or what is it you are asking him?

760 Mr. MacIntyre: I am asking him if he recalls about your having asked him about the destruction of documents and about Frascati's visit as of that date.

Mr. Stewart: All I asked him was as to what documents he didn't destroy, and he described the documents.

By Mr. MacIntyre:

Q. Now, I am asking you, Mr. Booth, if the destruction of certain documents from your files, which included a showing of the activities of the Organization Service Corporation in its work for the Rigid Steel Conduit Association, took place after Mr. Frascati's visit in August or July, 1937, and before he visited you again during May of 1938.

Trial Examiner Norwood: Is that a fact?

The Witness: I don't think so.

Mr. Stewart: Just a moment, please. There is nothing in the record to show that he did visit him. Are you testifying that he visited him, or are you asking him?

Mr. MacIntyre: I think the witness testified this morning that Mr. Frascati came back a second time, and I am prepared to show it was during May of 1938.

Mr. Stewart: I have no objection to your asking him if it was in May, 1938, but I don't think he testified that he was there twice.

Mr. MacIntyre: Well, I will ask the witness that question first then.

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761 By Mr. MacIntyre:

Q. Do you recall the time Mr. Frascati visited you a second time?

A. This August? He came back a second time.

Q. About when?

A. Well, I would not have remembered it, but you say it was May, 1938, and it probably was. I know he came back in the Spring of the following year.

Q. Did the destruction of any of these documents take place between the visit of Mr. Frascati in July or August, 1937, and the time he visited you in the Spring of the following year?

A. No, sir, I think I said to you this morning that the records were destroyed six weeks or so after we gave up the handling of the Association.

Q. Mr. Booth, is it your testimony that you did not tell Mr. Frascati on the occasion of this second visit to your office that you had destroyed many of the documents relating to these past and closed transactions, special building contract investigations and other inquiries that you had conducted, and that they were not available at that time for him to again examine for the purpose of making copies?

A. No, sir, I don't recall that at all. In fact, when he came back the second time he came in and talked to
762 Mr. Blake principally about the specific building job contracts. I don't think we went into any detailed information of any kind.

Q. You were present at the time when he discussed these matters with Mr. Blake, weren't you?

A. I think I was there all the time while he was there; yes, sir.

Q. You say you do not recall telling him that these matters which he asked for had been destroyed?

A. No, sir, I did not. I don't think I ever did.

Q. You say that you just simply do not recall or that you did not tell him that?

A. I don't think I ever told him so.

Q. Mr. Booth, I am now referring to Commission's Exhibit 487-A to P, inclusive, and I will ask you to state if that discloses the manner in which investigations of special building contracts were made by you or by the Organization Service Corporation, for Rigid Steel Conduit manufacturers?

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Mr. Poskanzer: I object to the question as being improper. This witness testified this organization served his company and he made no specific building contract investigations. They were made by an outside organization.

Trial Examiner Norwood: The objection is overruled.

Mr. Poskanzer: Exception.

763 The Witness: Will you read me the question?

Trial Examiner Norwood: Read the question.

(Question read.)

A. I think that would be a rather typical case. It was back for re-investigation at least once, possibly twice.

By Mr. MacIntyre:

Q. Mr. Stewart asked you this morning about the volume of work that you had handled for these other trade associations as an employee of the Organization Service Corporation, as compared with the Rigid Steel Conduit Association.

Mr. Stewart: Pardon me. I didn't ask that question. I object to the form of it, as not being a correct statement of what I asked.

I think the record will show what I asked was as to whether or not his work in the other organization was voluminous.

By Mr. MacIntyre:

Q. All right, with Mr. Stewart's amendment to my question, I will put the question to you.

Mr. Robison: What was the question?

By Mr. MacIntyre:

Q. Do you recall that?

A. Yes, sir, I do. I think I said my other work

764 was not as voluminous as the Rigid Steel Conduit.

Q. In what respect?

A. Paper work, clerical work, detail, what-not.

Q. Did you find that as to these other industries that you were required to preside over and make records of as many meetings as you did for the Rigid Steel Conduit Association?

Mr. Stewart: Just a moment. I submit there is no evidence, and I object to the form of the question, because it assumes facts not in evidence. There is no evidence that this witness presided over any meetings or any organization.

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Trial Examiner Norwood: I think you are going into new matter, there.

Mr. MacIntyre: He told Mr. Stewart, though, on cross-examination, that the work was more voluminous. I am attempting to find out in what respects it was more voluminous for the Rigid Steel Conduit Association.

Did it have to do with meetings?

Trial Examiner Norwood: You asked him that and he told you.

Mr. MacIntyre: He said more paper work, but I am now asking him if the meetings were also an element.

Trial Examiner Norwood: If that is the case, I will let him answer it.

765 The Witness: I don't think so. The meetings may have been a little more frequent. I think they had a meeting every month.

By Mr. MacIntyre:

Q. That was a little more frequent than the other industries required?

A. Yes.

Mr. MacIntyre: I believe that is all.

Mr. Robison: I would like to ask only one question, Mr. Examiner, if I may. May I have Exhibit 533-A and B?

(Documents handed to counsel.)

Recross Examination by Mr. Robison.

Q. Mr. Booth, I show you again the much-referred to Commission's Exhibit 533-A and B, the memorandum, the source of which has been questioned here, and I just want to ask you this question: that appearing to be a photostatic reproduction of a typewritten paper, can you, from examining the exhibit, form any opinion as to how that paper was typed in the office of Organization Service Corporation? I mean from the nature of the typing of it?

A. I don't think I could tell you, sir.

Q. Would a comparison with other papers, typed in that office at about that same time, perhaps help you

766 in that connection?

Trial Examiner Norwood: I think counsel and the Commission may do that comparing. He is not an expert.

The Witness: I wouldn't testify as to whether it was our typewriter. We had several there.

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Mr. Robison: I won't pursue it further.
Trial Examiner Norwood: The witness is discharged.

(Thereupon at 3:15 P. M. September 26, 1941, the hearing in the above-entitled matter was adjourned.)

770 PROCEEDINGS.

Trial Examiner Norwood: The hearing will come to order. Pursuant to adjournment on yesterday, the hearing in Docket No. 4452 is now reconvened in Parlor C, on the 22nd floor of the Hotel Abbey, New York, New York, at 9 o'clock A. M., Eastern Standard Time, on September 27, 1941.

Please note the appearances.

Proceed, Mr. MacIntyre.

Mr. MacIntyre: If your Honor please, I now make reference to the following exhibits, each of which bears on the reverse side thereof a certificate of Mr. R. W. Austin, attorney for the National Electrical Wholesalers Association, and F. R. Eiseman, to the effect that they are genuine and authentic, as follows:

Commission's Exhibit 627, a letter from Alfred Byers, Secretary of the National Electrical Wholesalers Association to chairmen and members of conduit committees of that Association, dated April 28, 1937;

Commission's Exhibit 628, letter from Alfred Byers to the members of that Association, that is, National Electrical Wholesalers Association, dated September 20, 1937;

Commission's Exhibit 629, a carbon copy of a letter from Revere Electric Company to I. A. Bennett, Na-
771 tional Electric Products Company, dated February 2, 1938;

Commission's Exhibit 631, letter from I. A. Bennett, National Electric Products Corporation, to F. R. Eiseman, Revere Electric Company dated May 12, 1938;

Commission's Exhibit 632-A and B, letter from I. A. Bennett to F. R. Eiseman, Revere Electric Company, dated June 10, 1938;

Commission's Exhibit 633-A and B, letter from I. A. Bennett to F. R. Eiseman, Revere Electric Company, June 16, 1938;

Commission's Exhibit 634, a letter from Alfred Byers, Secretary, National Electrical Wholesalers Association to

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chairmen and members of the conduit committee, including L. E. Latham, W. J. Drury, F. R. Eiseman, D. L. Fife, W. R. Kiefer, C. H. McCullough, H. B. Tompkins, dated March 9, 1939, with which was enclosed Commission's Exhibit 635, as suggestions for the company's agenda of a meeting proposed for Monday, May 22, 1939, at Hot Springs, Virginia;

Commission's Exhibit 636, copy of a letter from L. R. Quinn, National Electrical Wholesalers Association, dated November 23, 1938.

Now, those certificates are as I have represented, are they, Mr. Austin?

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

772 Trial Examiner Norwood: On the record.

Mr. Austin: I have just one question, if your Honor please.

I have identified and authenticated all of those mentioned by Mr. MacIntyre, except Commission's Exhibit 636, which I do not find my authentication on; is that right?

Mr. MacIntyre: Well, my statement as to all of them, except Commission's Exhibit 636, you accept?

Mr. Austin: Absolutely.

Mr. MacIntyre: I offer those documents into evidence, if your Honor please, except Commission's Exhibit 636.

(There is a pause while counsel for Respondents are examining the exhibits referred to.)

Mr. MacIntyre: If your Honor please, while they are studying these, waiting to make their objections, I would like to add to my statements these records and documents are offered as admissions and records of Respondents and as disclosing activities engaged in by them at that time.

Trial Examiner Norwood: Is there any objection to that proffer?

They are received as marked.

COMMISSION'S EXHIBITS NOS. 627, 628, 629,
773 631, 632-A and B, 633-A and B, 634 and 635, inclusive, were offered and received in evidence.

Mr. MacIntyre: If your Honor please, I make reference to Commission's Exhibit, for identification, 630, as one, bearing on the reverse side thereof the certificate of James M. Houston, attorney for Respondent, National Electric Products Corporation, that it is a genuine and authentic letter from I. A. Bennett, National Electric

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Products Corporation to Fred Eiseman, Revere Electric Company, dated February 3, 1938.

774 Mr. Robison: May I say, on the record, Mr. Examiner, that we understand that we may rely upon your assurance that Mr. MacIntyre's characterization of any paper that he offers can be totally disregarded and we do not need to note objections to it.

Am I right in that understanding?

Trial Examiner Norwood: Well, I do not know that we can make an all inclusive statement about that.

When he offers a paper as something and there is no objection to it, it might in some cases be received as that. I was just referring to his remarks, to his statements as to what the papers prove. They are not evidence and they are not considered as such, but when he offers something as a statement of so and so, why I think that that, if there is no objection, it is received as such.

Mr. Robison: Well, that is entirely contrary—

Trial Examiner Norwood: Except in this particular case, if he offers it as a statement of the respondents, I think that if nothing was said about that, I think it would make no difference. If he offered it as the admission of the respondents, or a respondent, the thing would show for itself whose admission it was, and if it were ever considered as an admission of the respondents, there would have to be the proper connection with the

775 evidence, connection by the evidence and of the whole record.

Mr. Robison: Well, what you have just now said is entirely contrary to what has been my understanding of what you have said heretofore, and we have not been making objections to such characterizations of papers by Mr. MacIntyre.

Now, in view of the element of doubt that you now indicate on the question, I think we have got to adopt an entirely different practice and object to every such characterization on the ground that the paper must be allowed to speak for itself.

Trial Examiner Norwood: No. I think my statement that I have just made there is contrary to what you appear to understand.

Mr. Stewart: Well, I have been under the impression that your ruling was that nothing that either counsel said

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as to what was in a document would change what was in the document, that the document spoke for itself.

Trial Examiner Norwood: And would be taken as evidence.

Mr. Stewart: That is right.

Mr. Bozeman: Regardless of what Mr. MacIntyre may say when he introduces it, or offers the document.

Trial Examiner Norwood: I think so. We are just splitting hairs over something. I think we are in
776 accord on it.

Mr. Bozeman: So then we have that thoroughly understood.

Mr. Robison: I hope we do. We may have to let ourselves in for some difficulties in the past, if we are not in accord on it.

Mr. MacIntyre: If your Honor please, I think what is worrying Mr. Robison is just this:

In an offer I made a couple of days ago I offered letters in carbon copy form, or carbon copies of letters, for example that had "A.H.F.", as the initials of the writer, and I offered that since it came from the files of Adolph H. Friend, of the respondent Austin Company, as a carbon copy of letter of Mr. Friend.

Now, there was no objection made to that, as to the offer. Of course, it did not show on the face of it that that was Adolph H. Friend, other than his initials, but we have a concession from Mr. Peyser that those letters, bearing that initial, and taken from Mr. Friend's files were Mr. Friend's letters, or carbon copy of the same.

Now, when I make an offer of one of those letters as a letter, or carbon copy of a letter of Mr. Friend, of course, I have added something to the face of the letter, but it is in accordance with the understanding with Mr. Peyser; but I do not propose at this time, unless ob-
777 jection is made at the time I am making the statement, to have that characterization of such a letter taken from my offer. I want it to be as a part of the offer and accept it as such, and no objection later interposed unless it is made timely, and if it is made timely I propose then to try to correct it, to correct defects of the offer to meet the objection.

Now, as to all of those things, I do object to any untimely objections being made.

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778 Mr. Robison: Mr. Examiner, I wonder, with some little amusement, where Mr. MacIntyre claims the right to state what is worrying me. I will not undertake to state what it may be. I think I have made it clear, but I am very much afraid that we have got to be more careful about making objections to things that we supposed could be overlooked in the past.

Trial Examiner Norwood: I can't imagine in the circumstance where counsel's characterization of a paper that he offers in evidence would be taken as evidence at all. He just called my attention to the fact that some of the proffers are based on agreements. Now, that would be different.

Mr. Robison: That is a very different situation.

Trial Examiner Norwood: I think it is very clear.

Mr. Robison: In nothing that I have said have I meant to indicate any departure from what has been our practice in the past pursuant to our stipulation that if something has been authenticated, we raise no question about it unless we know specific reasons.

Trial Examiner Norwood: The paper itself, or proof, must show what it is and not the statement of counsel.

Mr. Robison: That may be understood, and I think we can go on as we have been doing in the past.

779 Mr. Peyser: Mr. Examiner, as to what I stipulated or what I stated speaks for itself, and not the statement that Mr. MacIntyre made to you. I don't recall exactly what was stated.

Mr. MacIntyre: I think the record will show what our understanding is in that respect.

Trial Examiner Norwood: As counsel calls a stipulation a statement, the counsel should call his attention to it on the record at the time.

Are there any objections to the last proffer of the Commission's Exhibit 630 for identification?

Mr. Stewart: No objection.

Trial Examiner Norwood: Received as marked.

COMMISSION'S EXHIBIT NO. 630 was offered and received in evidence.

Mr. MacIntyre: If your Honor please, I now offer into evidence Commission's Exhibit for identification 636 as a carbon copy of a letter from L. R. Quinn, Vice-President of the respondent Enameled Metals Company, to the National Electrical Wholesalers Association, dated

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November 23rd, 1938, to the attention of Mr. Alfred Byers, and as authenticated as such on the reverse side thereof by Mr. Stewart, attorney for Mr. Quinn.

I offer that as an admission and as records of what transpired as shown on the face of it.

780 Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: On the record.

Mr. Stewart: No objection.

Trial Examiner Norwood: Received as marked.

COMMISSION'S EXHIBIT NO. 636 was offered and received in evidence.

Trial Examiner Norwood: Proceed.

Mr. Stewart: If your Honor please, we now call as a witness at the instance of the Commission, Mr. W. J. Donald.

Mr. Robison: May I ask for a moment's delay to go to the telephone, Mr. Examiner?

Trial Examiner Norwood: Yes, go right ahead.

(Short delay while Mr. Robison answered the telephone.)

W. J. DONALD was thereupon called as a witness for the Commission, and having been first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

Q. Mr. Donald, I believe the reporter has your name?

A. Yes.

Q. What is your business, Mr. Donald?

781 A. Managing Director of the National Electrical Manufacturers Association.

Q. In order to save time on the record, would you say that that position carries with it the general directorship and management of the association, that is of all of its affairs?

A. Yes.

Q. You were asked, Mr. Donald, to produce here this morning certain documents under a subpoena duces tecum. Will you please tell us what you were requested to produce and whether you have complied with that request under that subpoena?

A. The minute books of the Rigid Steel Conduit

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Section of the National Manufacturers Association, containing minutes of meetings for the period between 1921 and 1934 inclusive.

Q. Have you complied with that request, Mr. Donald?

A. Yes, in two forms: First, the minutes of meetings of the Associated Manufacturers of Electrical Supplies, June 9, 1916, to July 13, 1926, of which there was a—well, shall I say, more or less the equivalent of a Rigid Steel Conduit Section? I notice here reference to a Rigid Conduit Committee of the Interior Conduit Section. That would be about what it is.

782 Q. And is there included in those minuates in that booklet correspondence relating to the minutes, that is, transmittal letters and the like?

A. Yes. Here and there is a letter transmitting minutes.

Mr. MacIntyre: If your Honor please, I ask that that booklet of minutes be given the next number for identification as a Commission's exhibit, with sub-letters going to each page thereof, because it does contain, as I see it, quite a number of sets of minutes, which will ultimately not be offered as a whole, but as parts, into evidence.

Trial Examiner Norwood: You want the entire book given one number?

Mr. MacIntyre: But with the pages of it sub-lettered, because the pages are of loose-leaf form more or less.

Trial Examiner Norwood: It may be so marked.

(The document referred to was marked "Commission's Exhibit 691-A through Z-158, inclusive," for identification.)

By Mr. MacIntyre:

Q. Mr. Donald, did you bring with you any additional minutes than those contained in the one booklet, which have been marked as Commission's Exhibit 691?

A. The second is a volume of minutes of meetings
783 of the Rigid Conduit section of NEMA, the National Electrical Manufacturers Association, November 4, 1926, to April 24, 1934.

Mr. MacIntyre: If your Honor please—

A. (Continuing.) May I add that the Section was disbanded from these notes on April 27, 1934. It was dissolved by the Board of Governors of NEMA on April 27, 1934, which happened to be four days before I became associated with NEMA.

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By Mr. MacIntyre:

Q. So, under those circumstances, that accounts for you not having the minutes, any more of the year 1934?

A. That is right.

Mr. MacIntyre: If your Honor please, I ask that this second booklet be given the next number, in the same manner as the one which has been handed to the reporter for marking, as Commission's Exhibit 691, for identification.

Trial Examiner Norwood: Mark it 692-A to

(The documents referred to were marked "Commission's Exhibit 692-A to Z-341, inclusive," for identification.)

By Mr. MacIntyre:

Q. Now, you have produced these booklets, 691 and 692 as the minutes of that Rigid Conduit section of NEMA?

784 Mr. Robison: I object. The papers speak for themselves.

By Mr. MacIntyre:

Q. (Continuing.) For the period involved?

Trial Examiner Norwood: He is merely stating the things were produced, as complying with the terms of the subpoena duces tecum.

Trial Examiner Norwood: The objection is overruled.

By Mr. MacIntyre:

Q. Is that correct, Mr. Donald?

A. Yes.

Q. And why did you produce these, as such, in response to that subpoena duces tecum, Mr. Donald; I mean, why did you produce these particular booklets in response to the subpoena duces tecum?

A. Well, to the best of my knowledge and belief, 785 they are the complete record of the minutes of the section, of the National Electrical Manufacturers Association for that period?

A. And its predecessor organization.

Q. And has the National Electrical Manufacturers Association kept those among its records, as such?

A. Yes.

Q. That is, as records of that Section?

A. Yes.

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Q. For that period?

A. Yes.

Q. Have they been kept as records of the National Electrical Manufacturers Association, as such, under your direction during the time that you have been with that Association?

786 The Witness: Well, those were the records as to that date. If they have not been destroyed, we have kept them.

By Mr. MacIntyre:

Q. And you have maintained them as the records of the National Electrical Manufacturers Association?

A. If you mean by "maintain" kept, yes.

Q. In your offices of that Association?

A. That is right.

787 Trial Examiner Norwood: Tell us why you understand them to be the minutes of this Association.

The Witness: We naturally keep all our records, 788 and we have an orderly way of keeping records. A man is in charge of them, and I have never had any occasion to look at them.

Trial Examiner Norwood: But you found these in the records of the Association?

The Witness: Yes. As a matter of fact, when this subpoena appeared, they were laid on my desk; they were there when I got back this morning, and here they are.

Trial Examiner Norwood: Proceed.

By Mr. MacIntyre:

Q. Mr. Donald, I show you exhibit, Commission's Exhibit, for identification, 409. Do you recognize that, and if so, as what?

A. This is, so far as I know, an exact copy of the constitution and by-laws and organization and working rules of the National Electrical Manufacturers Association, as amended, to November 18, 1933.

789 Q. Do you know of any amendments that took place to the constitution and those by-laws between the date of November 18th, 1933, and April, 1935; that is, any further amendments?

A. Not at the moment. There may have been, but I would have to check the records.

Mr. MacIntyre: If your Honor please, I show the wit-

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ness Commission's Exhibit for identification 410, and ask you, Mr. Donald, if you recognize that as a list of the officers of the National Electrical Manufacturers Association, and the names appearing thereon as the names of the officers for the period specified on the document?

The Witness: The officers or directors?

By Mr. MacIntyre:

Q. The officers?

A. They are both.

Q. Officers and directors, Board of Governors?

A. Yes.

Q. I now show you, Mr. Donald, Commission's Exhibit for identification 411A and B, and ask you to state whether or not you recognize that as a list of the Board of Governors of the National Electrical Manufacturers Association for the period 1934-35, and the names thereon appearing as the names of the men whom you knew to have been members of that Board during that period of time?

A. As nearly as I can recall, I have no reason to 790 question it.

Mr. Robison: Do you know anything about it?

The Witness: Well, certainly.

Mr. Robison: The point I am is making is that what you know we don't object to your saying, but what you merely surmise we seriously object to.

Trial Examiner Norwood: Counsel will have time to cross examine this witness.

By Mr. MacIntyre:

Q. Mr. Donald, I will ask you whether or not the name of F. C. Hodkinson, over the words "American Circular Loom Company, 205 East 42nd Street, New York, N. Y." as appearing thereon, if you recognize that as the name and affiliation of any person who served on the Board of Directors of the National Electrical Manufacturers Association during the period of 1934-35?

Mr. Stewart: Just a moment. Just to raise a question, I submit that until the witness has been established to have been connected with the organization in such a way as to have had knowledge of the facts about which he is asked to testify, his testimony is obviously hearsay. It doesn't appear yet that he was connected with the National Electrical Manufacturers Association during that period.

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Now, if Mr. MacIntyre will establish that, then we won't have all this trouble.

791 Trial Examiner Norwood: Read the question.

(Question read.)

Mr. MacIntyre: I submit your Honor, that the witness has already testified that he came into his office with this Association during April, 1934, and I don't propose to duplicate the record by showing that fact again. He testified less than fifteen minutes ago that it was, I believe, on April 27 or a few days thereafter that he came into his office.

The Witness: It was May 2nd.

Trial Examiner Norwood: Read me the question, please.

(Question read.)

Trial Examiner Norwood: The objection is overruled. Answer the question.

The Witness: He served on the Board in the year ending about September, 1934, and this record would lead me to believe that he certainly served on the Board the next year.

Mr. Robison: I object.

Trial Examiner Norwood: Tell us what you know, just tell us what you know about it.

792 By Mr. MacIntyre:

Q. You knew Mr. Hodkinson, did you, Mr. Donald?

A. Yes.

Q. With what concern did you know him to be connected at that time?

A. American Circular Loom Company.

Q. Did you also know him as a member of the Board of Directors?

A. Yes.

Q. I mean the Board of Governors, of National Electrical Manufacturers Association?

A. Yes.

Q. Did you know of any duties that he performed in that connection, with any section of the National Electrical Manufacturers Association?

A. As a member of the Board, or as a member?

Q. As a member of a section?

A. Well, I can't recall what section he may have been a member of. I do not think there was a loom section at that time. I do not think there had been for some years.

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Q. But you knew him as a member of some section of NEMA?

A. He must have been.

Q. Well, it was a requirement that he be before he could have been a member of the Board of Governors?

Mr. Stewart: I object.

793 Mr. Robison: I object.

Mr. Stewart: I object to the question as being leading.

Mr. MacIntyre: I will withdraw the question in that form, if it is objected to as leading.

Mr. Stewart: This is your witness.

Mr. MacIntyre: I am only attempting to save time.

Trial Examiner Norwood: The objection is sustained. Go ahead.

By Mr. MacIntyre:

Q. What are the requirements, Mr. Donald, as to the eligibility for membership on the Board of Governors of NEMA, would that be shown in Commission's Exhibit 409?

A. Yes.

Q. Well, you need not enumerate them then if they are shown in that.

Mr. MacIntyre: I believe that is all, Mr. Donald.

Mr. Stewart: Now, just a moment. Let us have an understanding about this. Is it your idea that you are going to let this witness go and not offer these documents evidence and deprive us of the right of cross-examination before you offer them?

Mr. MacIntyre: You can cross examine him about any of the documents that he brought here this morning at this time that you want to cross examine him on, and I

794 will ask the reporter to turn over to counsel for the respondent the documents Mr. Donald produced for their use in the cross-examination of this witness.

Mr. Robison: Mr. Examiner, obviously there is no point in our undertaking to cross examine this witness regarding documents until we know which of the documents, if any, are offered in evidence. We might take days to go over these two volumes, and asking the witness about it, but it would be utterly wasted time unless we knew they were going to go into evidence or not.

Trial Examiner Norwood: Does the counsel for the Commission not desire to offer those in evidence now, any of those papers?

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Mr. MacIntyre: As soon as we can get them marked I will make an offer on them.

Mr. MacIntyre: Before you proceed with the cross-examination, I think I should, before Mr. Donald is discharged this morning make an offer on some of the documents, and I do at this time offer Commission's Exhibits 409, 410, 411A and B; and I offer Commission's Exhibits 409 as a copy of the Constitution and By-laws, Organization
795 Working Rules of the National Electrical Manufacturers Association as amended up to and including November 18th, 1933; Commission's Exhibit No. 410 as a list of officers of the National Electrical Manufacturers Association, 1934-1935, including a list of its Board of Governors; and Commission's Exhibit 411A and B, as a list of the Board of Governors of the National Electrical Manufacturers Association during 1934 and 1935.

796 Mr. Stewart: Now, I should like to have an offer as to what you propose to prove by these documents.

Mr. MacIntyre: Would you require that?

Mr. Stewart: You have to do it.

Mr. MacIntyre: Well, I do not hesitate to so do, if you desire it.

Mr. Stewart: I know you do not.

Mr. MacIntyre: And his Honor thinks it is necessary. I can say this: that they are offered to prove that one of the statements made by Mr. Stewart last week, at the time I was offering Commission's exhibits in the form of writings by Mr. Hodkinson, that Mr. Hodkinson was an official of the Federal Government, and therefore Respondents were not responsible for what he wrote as such.

It is my contention that the offers now pending, clarify to some degree my statement made at the time that Mr. Hodkinson was not an official of the United States Government.

These further show a closer connection between Mr. Hodkinson and the other Respondents, which will be added to as we proceed.

797 Trial Examiner Norwood: On the record. Proceed.

Mr. Stewart: Well, in the light of the offer, I object to the documents as incompetent, irrelevant and immaterial; Commission's Exhibit 409 being the constitution and by-laws, organization and working rules of National Electrical Manufacturers Association, as amended November 18, 1933,

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upon no theory being competent in this proceeding, this Association not being a Respondent or in any way involved in this proceeding as of that date.

Mr. MacIntyre: Does that objection go to the identification of that, Mr. Stewart?

Mr. Stewart: No, no, I object to its competency. I object to Commission's Exhibit 410, which purports to contain the NEMA officers and Board of Governors for the years 1934 and 1935, for the reason that there has been no competent proof that this document correctly shows the officers and Board of Governors for that period; and the same objection goes to Commission's Exhibit 411-A and B.

Trial Examiner Norwood: Is there any further objection?

Mr. King: If your Honor please, in connection with Commission's Exhibits 409, 410 and 411, for the first purpose Mr. MacIntyre desires to offer them, I have no objection for the reason that all of those documents are
798 on file with the National Archives as records of the National Industrial Recovery Administration, with the further record that they are all, that is, Commission's Exhibits 410 and 411 are approved by the administrator of this particular Code.

Mr. Robison: What code.

Mr. King: The National Electrical Manufacturers Association code, so if the offer is limited, as I understand the first purpose of it is, I have no objection to it.

799 Trial Examiner Norwood: Are there any further objections to it?

The objection is overruled. The documents are received as marked.

COMMISSION'S EXHIBITS NOS. 409, 410 and 411A and B were offered and received in evidence.

Mr. Stewart: Now, will you let me have those minutes, please?

Mr. MacIntyre: In the light of the further objection, I want to make a further request of the witness, Mr. Donald:

Mr. Donald, will you please submit to his Honor a copy of the list of the—well, a copy of the records duly certified by you, of the National Electrical Manufacturers Association which carries a list of the Board of Directors of the National Electrical Manufacturers Association for the years 1934 and 1935?

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The Witness: That is two years?

Mr. MacIntyre: Yes.

The Witness: May I ask what constitutes a satisfactory record?

Mr. MacIntyre: Well, a duplicate of the records of the Association showing its Board of Directors, a list of its Board of Directors for that year or for those two
800 years.

Trial Examiner Norwood: Well, isn't that what you have here already?

Mr. MacIntyre: I contend that I have, and we will be able, of course, to further prove it if the respondent's counsel insists upon another witness being brought in here for that purpose.

Mr. Stewart: If I understand it, the document has been admitted.

Mr. MacIntyre: Well, that has been, but again it is over objection that you do not believe it is true, and you do not believe it is a correct list.

Mr. Stewart: Again, Mr. MacIntyre, your imagination is working overtime. We did not say it was not true. We said you had not proved it properly.

Mr. MacIntyre: Well, I want to know what respondents require as to the proof and authenticity of that as a list of the Board of Directors, and I will meet it.

Trial Examiner Norwood: Now, wait a minute. I want to remind counsel for the Commission that the object of the hearing is to produce evidence that goes to the Commission through the Trial Examiner, and he is not required to convince the other side of a point, or even if he should do so, he is not required to force them to admit that they are convinced.

801 Mr. Stewart: That is quite frequently the case, a man convinced against his will is of the same opinion still.

Trial Examiner Norwood: Now, if the witness wants to send this list to me and counsel offer it, we will then discuss it. There is no use discussing it now, and the witness has said that he would furnish that so I shall receive it and examine it.

Mr. MacIntyre: Well, I tender the witness for cross-examination, and with the statement to respondent's counsel that I do intend to offer photostats of all of the list of minutes appearing in the books marked for identification

Commission's Exhibits 691 A to Z 158, inclusive, and 692 A to Z 341, inclusive.

Trial Examiner Norwood: That is because this Association requests return of their file?

Mr. MacIntyre: Yes. It is their regular records, and we do not propose to take records from a non-respondent here, and put them into evidence unless with their consent.

Trial Examiner Norwood: Well, is that agreeable, that photostats may be substituted?

Mr. Stewart: Well, do I understand that, what we are supposed to do is to sit here and go through those pages and find out what ones you intend to offer?

Mr. MacIntyre: I told you I intended to offer all 802 papers in those two books.

Mr. Robison: Well, undoubtedly, Mr. Examiner, there is a great deal in there that will be properly subject to objection as entirely immaterial, probably as incompetent.

Now, it seems to me that it is not proper procedure to expect us at this point to assume that the Examiner is going to admit in evidence the entire contents of these books and therefore to proceed with cross-examination of this witness on that assumption. As I have said before, it seems to me that to undertake to do that, we might spend days here doing it.

Mr. Stewart: Then, of course, another, rather ironical situation is that Mr. MacIntyre has my set of the same documents, and I cannot even use them to find out what he is putting in evidence, so that I could study them over the weekend, at least, so you see it is about as artistic piece of hanging as I have seen.

Mr. MacIntyre: Well, I do not hesitate to let Mr. Stewart look at the documents that I propose to offer in evidence. I have stated off the record here I do propose to offer Commission's Exhibits 2A to Z237, which are the minutes that he produced of the files of the Rigid Steel Conduit Association and which were so marked for identification. I am going to offer those into evidence in toto 803 and if he wants to examine those over the weekend before the offer is made and before they are received in evidence, of course, I have no objection to him doing so.

Mr. Stewart: Well, that is what I want.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: On the record. Proceed. Now, does counsel offer these minutes here, Commission's Exhibits 691A to Z 158, inclusive, and Commission's Exhibits 692A to Z 341, inclusive.

Mr. Robison: Mr. Examiner, if that happens now, I am going to have to go over each set of minutes and object to those that seems to me to be objectionable. It is a long process.

Trial Examiner Norwood: Well, that cannot be avoided anyway, can it?

Mr. Robison: I should think so. I see no justification for counsel for a party offering a mass of stuff here which probably, offhand I would say at least, nine-tenths has no bearing whatsoever. I am making the point with the Examiner that if these are offered en masse, we will have to take time to examine every one to make a suitable objection to them, and it seems to me it is an almost outrageous procedure to offer a mass of papers like that where a large part of it, in my humble opinion at least is in-
804 admissible.

Trial Examiner Norwood: Well, I do not know until we see them.

Mr. Robison: That is exactly it. It seems to me it is for the counsel who proposes to offer papers to first determine in his own mind, and according to his own opinion, whether they are admissible or not, and not to offer a mass which he himself has seen only here within the last hour.

Mr. MacIntyre: If your Honor please, I have well considered all those factors and circumstances that Mr. Robison has just enumerated and I have come to this conclusion, that in an effort to show that the respondents here, or at least a number of them, as members of the Rigid Conduit Section of the National Electrical Manufacturers Association and as members of other groups have over a period of years carried on a course of action among themselves of a particular type involving activities relevant and material to the issues here, places the burden upon me, and especially in the light of objections, of offering an entire set of minutes as produced from the files of the Rigid Steel Conduit Association by Mr. Stewart, and which have been marked for identification as Commission's Exhibit No. 2A to Z327, and to further offer because of objections as to, and because of other circumstances that

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have come into the picture going to the question of
805 authenticity and the genuineness and the truthfulness of the material contained in Commission's Exhibit No. 2A to Z327, I find that the burden is upon me to offer at this time all of the papers contained in documents marked for identification this morning Commission's Exhibit 691A to Z 158, inclusive, and Commission's Exhibit No. 692A to Z 341, inclusive, and ask your Honor for leave to withdraw from that combined offer any documents which I, and counsel for respondents can agree are duplicates with the further understanding that we would be able to agree that the duplicate which we agree is found in Commission's Exhibit 691A to Z 158, inclusive, and Commission's Exhibit 692A to Z 341, inclusive, of a document which appears to be in Commission's Exhibit No. 2A to Z 327, was produced from the records of the National Electrical Manufacturers Association by Mr. Donald this morning as its managing director under subpoena duces tecum. Now, I assure you that I assure you that I would withdraw, if we can reach such agreements any such duplications from the record.

Mr. Taylor: I was just going to suggest, that off the record a while before I think Mr. Austin made a very reasonable suggestion, and that is in view of the fact that
806 the attorney for the Commission has already at one point offered what apparently he considers those portions of these minutes, or what he believed to be were copies of those portions of these minutes material to this case, it would at least relieve the undue burden being placed on counsel for respondents at this time, if he would offer so much of the exhibits for identification, Commission's Exhibits 691A to Z 158, inclusive, and Commission's Exhibit 692 A to Z 341, inclusive, as corresponded to Commission's Exhibit for identification 2 A to Z 327. That would tend to cut down the burdensome chore with which we are faced at this particular point, and it would certainly correspond with Mr. MacIntyre's desire and intention as to what he wants in evidence.

Mr. MacIntyre: If your Honor please, I have well considered the problem posed by Mr. Taylor, and while if problems had not been thrown at me which have in the past week, I could probably so limited that offer, but with the problem now I am faced that I cannot limit the offer to these two sets of minutes, but I feel it is a burden on

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me to show a course of action by these respondents over a period of years so as to show particular acts, the record authenticity of which is in question, will at least be considered along with the particular acts, the entire course of action.

Mr. Peyser: Mr. Examiner, I would like to point
807 out in answer to Mr. MacIntyre's last statement, and also further Mr. Stewart's general objection, if you will refer to Commission's Exhibits 50A to G, 51A and 52A, I believe it will show to your Honor that the so-called course of conduct did not and could not exist and these minutes actually are irrelevant in that Triangle, for example, a New York Company did not commence the sale of conduit at all until 1926, and did not commence the manufacture of conduit until 1929; the respondent M. B. Austin at no time manufactured conduit, and at no time was a member of the NEMA.

808 Trial Examiner Norwood: Now, your previous offer
809 was of Commission's Exhibit 2Z3 to 6, 2Z122 to 127; 2Z129 to 135; 2Z160 to 163; 2Z169 to 171; 2Z175 to 176; 2Z177; 2Z284 to 286; 2Z292 to 297; 2Z300.

Now, is there anything in these new minutes, which have been identified by this witness that is contained in those records?

Mr. MacIntyre: Yes, your Honor, quite a number of additional sets of minutes that contains relevant and material matter to the issues here, and I may add that Commission's Exhibit 2 also has additional sets of minutes that contain material relevant and material to the issues here, and I have not had an opportunity to complete the offer even on that, when this matter arose last week, when I withdrew the offer of our few sets from that exhibit, as I did at the time.

Trial Examiner Norwood: Well, now, if counsel are unable to agree as to the authenticity of the other set of minutes, then of course I am going to permit the introduction of these other minutes, that is, such of them as I consider relevant and material.

Don't you think if we recessed here, counsel may arrive on the most economical way of handling this evidence?

Mr. MacIntyre: Well, we will agree to any practical and economical method as to time and money, here,
810 of handling it.

I do ask, however, that we proceed with the cross-examination of the witness. I can see that that is a problem aside and apart from the other problem.

Trial Examiner Norwood: I think so, too.

815 *Redirect Examination by Mr. MacIntyre.*

Q. Mr. Donald, referring again to Commission's Exhibits, for identification, 691 and 692, the minute books which you have produced here this morning, can you tell us whether or not officials and employees of the National Electrical Manufacturers Association have accepted and treated, used and acted upon those as authentic, genuine records of what they purport to be?

816 Trial Examiner Norwood: Answer from your own knowledge about that.

The Witness: I should take it for granted that the only record we have is the record of what happened.

817 (Question read.)

A. I can't possibly recall any appointments.

Mr. MacIntyre: I believe that is all.

Trial Examiner Norwood: Thank you, Mr. Donald.

(Witness excused.)

821 Pursuant to adjournment on Saturday, September 27, the hearing in Docket 4452 is now reconvened in Parlor C, 22nd Floor, Hotel Abbey, New York, New York, at ten o'clock a. m., Eastern Standard Time, on September 29, 1941.

Please note the appearances.

Proceed, Mr. MacIntyre.

Mr. MacIntyre: If Your Honor please, may the record show that I am now turning over to Mr. Stewart for use by all Respondents' counsel in connection with the study and comparison with Exhibit 2, which I turned over to Mr. Stewart on Saturday, the following exhibits at this time:

Commission's Exhibit for identification 691-A to Z-158, inclusive, and Commission's Exhibit for identification 692-A to Z-341, inclusive, in two binders.

Mr. Stewart: May the record show that I would rather have Mr. MacIntyre turn them over to somebody else because I am satisfied. There is no reason why I

should be responsible and go over them again, having gone over them once.

Mr. MacIntyre: Would you care to make a study of them, Mr. Robison, out of the hearing room for the
822 purpose of making your comparison along with the other counsel?

Mr. Robison: I will be glad to.

Mr. MacIntyre: All right, I will turn them over to Mr. Robison instead of Mr. Stewart. Mr. Stewart has made his comparison yesterday.

Trial Examiner Norwood: Call your witness.

Mr. MacIntyre: If Your Honor please, we now call a witness at the instance of the Commission, Mr. H. S. Walker.

H. S. WALKER was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

Q. Mr. Walker, will you please state for the record the nature of your business and occupation?

A. President of Walker Brothers who manufacture electrical construction material consisting of conduits and wire.

Q. That is Walker Brothers, one of the Respondents here?

A. Yes.

Q. How long have you been President of that concern?

A. Since 1912.

Q. Does Walker Brothers manufacture and sell rigid steel conduits?

823 A. Yes, sir.

Q. What types of rigid steel conduits? Will you please give the kind?

A. I didn't get you, sir.

Q. Well, as to enameled or galvanized or just what it handles.

A. We manufacture galvanized and black enameled conduit both in heavy wall and light wall.

Q. Sold under any particular brand names?

A. Yes, sold under the name "Dualkote".

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Q. Do you handle sheradized?

A. We use the sheradizing method in our manufacturing.

824 Q. Of the galvanized type?

A. We galvanize by the sheradizing process.

Q. I believe the record already shows, and is in the pleadings, as to the corporate organization of Walker Brothers, but to be sure that we have that, will you please tell us what the organization is, whether it is a Pennsylvania corporation, just what it is?

A. Walker Brothers is a Pennsylvania corporation chartered in 1912.

Q. Who are the other officers, in addition to yourself, Mr. Walker?

A. Eight or ten. Do you want me to mention them?

Q. The present officers; that is, who were officers on January 25, 1941.

A. H. Newton Walker, vice president, A. M. Callinan, vice president, H. Denny Roberts, A. T. Cameron, secretary, E. K. Mitman, assistant secretary. I think that H. Newton Walker is also treasurer as well as vice president, and E. K. Mitman is assistant secretary and treasurer.

That is the list.

Q. Now, in the manufacture of this Rigid Steel conduit, at what place does that take place?

A. Conshohocken, Pennsylvania.

Q. Do you secure your raw materials there also?

A. Well, do you refer to pipe as raw material?

825 Q. Yes.

A. No, we buy our pipe from the Bethlehem Steel Company.

Q. Manufactured where?

A. At Sparrow's Point.

Q. Maryland?

A. Maryland.

Q. Over what territory do you solicit and do business in the sale of Rigid Steel conduit, Mr. Walker?

A. Along the coast.

Q. Just briefly tell us the outlines?

A. Atlantic, Gulf and Pacific Coasts.

Q. In other words, over the entire United States?

A. We do not sell in the Middle West.

Q. How far west do you solicit business?

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A. Well, we won't go farther west than Altoona in Pennsylvania. In New York we might sell the full state. In other words, I say we don't sell within, we will say, 500 miles each side of the Mississippi, except in the Gulf Coast.

Q. Do you sell throughout the Southeast?

A. Yes.

Q. Do you maintain a sales office in Chicago?

A. No, we have a representative.

Q. What is the business of that representative in
826 Chicago?

A. To distribute our wire products.

Q. He doesn't handle Rigid Steel conduit?

A. No, sir.

Q. Your best recollection is that the shipments that you make by rail to the West from Conshohocken, the fartherest point is Altoona?

A. Altoona in Pennsylvania, and a line might be drawn through Altoona north and south.

Q. Do you regularly solicit business up to that line for shipments by rail from Conshohocken?

A. Yes, sir, preferably trying to take advantage of water shipments.

Q. Water shipments on shipments from Conshohocken to Altoona?

A. Of course, we can't do that, but I say that our effort is to sell so that we can avail ourselves of water shipments. Now, there are exceptions to every rule. We might ship a car of material to St. Louis if we had some preferred customer or something like that, but we do not make a practice of it.

Q. But you regularly ship by rail from Conshohocken as far west as Altoona?

A. Yes.

Q. And how long have you done that?

827 A. Forever.

Q. Has that line of shipments to the West drawn north and south to Altoona varied, or has it been rigid?

A. It would be varied, as I explained. If we had a preferred customer or a preferred job, or our material would happen to be specified, we would not hesitate to make a shipment almost any place.

Q. Has the variation ever moved east of Altoona, to your knowledge? That is the line in your shipments by rail west?

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A. I don't believe I understand you, Mr. MacIntyre.

Q. Has there ever been a time, Mr. Walker, when you made shipments regularly to a territory that was more constricted than to the line as far as Altoona?

In other words, can you recall any time in your experience when Walker Brothers' territory did not regularly reach as far as Altoona?

A. Oh, I would say that has been our practice ever since we started in business.

Q. The variation, then, in the line is between that and some point west, rather than between Altoona and some point east?

A. Mr. MacIntyre, the only variations are when we get a preferred customer, in which case it might be to our interest to go ahead and make shipments further
828 west. We have put some conduit in Chicago; we have put some down in St. Louis. We don't like it. Our position is such that it entails a freight loss. We can't compete.

Q. But you have never restricted your territory to the points east of Altoona?

A. I don't get your point.

Q. Even though you do sometimes carry it to points beyond; is that correct?

A. The interest of the company is to sell its products on a profitable basis, and our location being in the East makes it natural that we should devote our time to eastern business or to coastal business, I will put it.

Q. Well, you have always rigidly sold, though, for shipment as far west as Altoona? You have never restricted your business to any territory east of Altoona?

A. No, sir, we have not.

Q. During the course of the period that you have served as president of Walker Brothers, have you also served as an official of any trade association of Rigid Steel Conduit Manufacturers, in which either you or Walker Brothers had a membership?

A. I have served both NEMA and the so-called Rigid Conduit Associations as they came along.

Q. Give us as briefly as you can a history of the offices which you have filled in those associations.

829 A. With NEMA I was a governor.

Q. A member of the Board of Governors?

A. Yes.

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Q. Over what period of time?

A. I think the governors are elected for a three-year period. I think I was governor for two of those periods, and I suspect it was in the late twenties; it might have been in the early thirties.

Q. You don't recall precisely the time?

A. No, I do not.

Q. Did you serve in any other office?

A. Not with NEMA, no, sir.

Q. Did you serve in any office in any section of NEMA?

A. I would say no, sir.

Q. Did you ever serve as secretary of the Rigid Conduit Section of NEMA?

A. Yes, sir.

Q. Can you tell us briefly the period over which you served there?

A. No, sir, I could not. The records that I have seen here this morning would give that. I would like to explain that the Rigid Conduit Associations have jumped around from pillar to post. It has never been a very stable association, even when it was with NEMA, The Rigid Steel Conduit Associations have a way by which they would 830 form, the members would drop out, and the thing would be allowed to drag so that any information that I might remember along those lines could be gotten very much better from records than it could from my memory. The Rigid Steel Conduit Associations were like Finnegan, on again, off again.

Q. This organization reorganized from time to time; is that correct?

A. Yes.

Q. Well, now, when the group left NEMA in 1934, do you recall the formation of the Rigid Steel Conduit Association as an entity of its own at that time?

A. Let's say I do.

Q. And you subsequent to that date served as an officer of that association?

A. Yes, sir.

Q. What office?

A. Oh, I served as chairman of the Development Committee, Trade Extension Committee, rather, we called it. I might have been treasurer.

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Q. Were you president of the Rigid Steel Conduit Association during 1936?

A. I cannot answer, sir, without looking at the records. As a matter of fact, I was only president of
831 the Rigid Steel Conduit Association because the president was indisposed or something, and maybe it was for a period of a couple of months. I was never what you might consider an elected president.

Q. But you served as president?

A. I did, during the indisposition, I think, of Mr. Bennett, one time for a couple of months.

Q. Was that a period of time just before the Organization Service Corporation took over the management and operation of the Rigid Steel Conduit Association?

A. To be honest with you, Mr. MacIntyre, last night when I was shown these minutes that I had signed, in which, when the Conduit Association was a member of NEMA, I had forgotten about the Rigid Conduit Association or members had ever been a member of NEMA.

Q. Now, speaking of a period when conduit left NEMA, 1936, just before the Organization Service Corporation became connected with the Rigid Steel Conduit Association, do you recall that as the period of time during which you served as president of the Rigid Steel Conduit Association?

A. No, I don't think so, sir. I am more inclined to think that when the Association left NEMA, it had broken up, and I do not know when the Robinson-Patman Act was passed or when Blake was invited to become our legal counsel. I would suspect it was after the industry had
832 gotten out of NEMA.

Q. That you became president?

A. I cannot tell you when I became president without looking at the records. I do not know. It was only for a short period of time; as I have said, I was never an elected president.

Q. What other office did you fill in the Rigid Steel Conduit Association after it left NEMA in 1934?

A. Of course, I would like to make it plain, when you refer to Rigid Steel Conduit Association, that association was broken up and reformed a great many times. Now, which association you refer to, I do not know. I do not see that it makes any difference as far as I am concerned, but I want to make it plain that the Association was not

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stable, so there were a lot of things happened that you just simply passed out of your mind.

Q. I am talking about the Rigid Steel Conduit Association which had offices at 42nd Street.

A. That is when George Sicard, I think, must have been secretary.

Q. Do you recall him as secretary?

A. Yes, sir.

Q. Of that organization?

A. Yes, sir.

Q. By that name?

833 A. Yes, sir.

Q. And did you serve as president of that organization at any time after Sicard was secretary?

A. I would say that I did during the time that I have referred to in previous testimony here.

Q. And do you recall your service in any other office of that Association during that period of time?

A. Yes, sir.

Q. What offices?

A. I was chairman of the Development Committee, Trade Extension Committee.

Q. Any others?

A. No, sir.

Q. What was the nature of your duties as chairman of the Trade Extension Committee of that Association?

A. To propose and develop means whereby we could increase the industry's tonnage which had been rapidly falling off.

Q. Did you deal with any other matters?

A. Not unless you would call advertising matters; in other words that committee had charge of suggestions for the development of the Rigid conduit business.

Q. Do you recall any other activities of that committee?

A. No, sir.

Q. Now, in connection with your holding of offices

834 and membership in the Rigid Steel Conduit Association, do you recall a person who was also active in that Association by the name of Frank C. Hodkinson?

A. Very well.

Q. Tell us, if you can, any position which you knew that he held in that Association at about the time that it left NEMA, and shortly thereafter.

A. Well, of course, he was under NRA. He was the industry's—I forget just what it was called.

Q. Supervisory agency?

A. Supervisory agency; yes, sir.

Q. And for how long?

A. Frank Hodkinson, as a rule, was also on the Trade Extension Committees.

Q. For what period of time, do you recall, that Mr. Hodkinson served as supervisory agency for the industry?

A. Well, during NRA's days until it blew up. Is that a year, or a year and a half? He was the sole one and all.

835 Q. Do you know as a matter of fact that during that same period of time he was also an official of the American Circular Loom Company?

A. Yes, sir.

Q. Was he?

A. Yes, sir.

Mr. MacIntyre: I would like to borrow from Mr. Robison for the purpose of showing the witness Commission's Exhibit No. 692.

Mr. Robison: That is the minutes?

Mr. MacIntyre: Yes.

(Mr. Robison handed the exhibit referred to Mr. MacIntyre.)

By Mr. MacIntyre:

Q. Mr. Walker, I show you Commission's Exhibit for identification 692-Z-118 to Z-120, inclusive, and ask you to state whether or not you recognize those documents, and if so as what?

A. I recognize them as minutes of the Rigid Conduit Section of NEMA.

Q. For what period of time?

836 A. July, 1931.

Q. Now, I show you Commission's Exhibit for identification 692-Z-134, and ask you to state if you recognize that, and if so as what?

A. This is the same thing as the previous exhibit except it is December, 1931.

Q. Do you recognize it as minutes of the meetings of the Rigid Conduit Section?

A. Of NEMA, yes, sir.

Q. Is that your signature?

A. Yes, sir.

Q. I now show you, Mr. Walker, Commission's Exhibit for identification 692-Z-285 to Z-290, inclusive, and ask you to state whether or not you recognize those documents, and if so as what?

A. (The witness is examining the papers referred to) Yes, sir. These are the same as previous exhibits and signed by myself.

Q. For what date?

A. September, 1933.

Q. Now, Mr. Walker, I show you Commission's Exhibits for identification 692-Z-292 to Z-298, and ask you to state whether or not you recognize those documents and if so as what?

A. These are the same as the previous exhibits 837 signed by myself.

Q. That is, you recognize them as the minutes of the Rigid Conduit Section of National Electrical Manufacturers Association?

A. I do.

Q. And they are signed by you?

A. That is right.

Mr. King: What is the date on the others?

Mr. McDaniel: Give us the date.

The Witness: October 19, 1933.

By Mr. MacIntyre:

Q. I now show you, Mr. Walker, Commission's Exhibits 692-Z-323 to Z-326, inclusive, and ask you to state whether or not you recognize that document, and if so as what?

A. The same as the previous exhibits and signed by myself, dated January 31, 1934, and February 1, 1934.

Q. Do you recognize those as Rigid Conduit Section of National Electrical Manufacturers Association minutes of meetings of the date shown thereon?

A. I do.

Q. I now show you document marked for identification as Commission's Exhibit 692-Z-332 to 334, inclusive, and ask you to state whether or not you recognize that document, and if so as what?

A. The same as the previous exhibits and signed by 838 myself.

Mr. King: The date, please.

By Mr. MacIntyre:

Q. That is, you recognize those as the minutes of the Rigid Conduit Section of National Electrical Manufacturers Association of March 22, 1934?

A. I do, sir.

Q. I now show you Commission's Exhibit for identification 692-Z-134 to Z-135, inclusive, and ask you to state whether or not you recognize those two documents, and if so as what?

A. The same as the previous exhibits signed by myself.

Q. That is, both of those documents were signed by you?

A. That is true.

Mr. Poskanzer: Give us the dates, please.

By Mr. MacIntyre:

Q. As minutes of the Rigid Steel Conduit Section of National Electrical Manufacturers Association for December 1, 1931?

A. Right.

Q. And December 15, 1931?

A. Right.

Q. I now show you documents marked for identification as Commission's Exhibits 692-Z-132 to Z-133, and ask you to state whether or not you recognize those, and if so as what?

839 A. The same as previous exhibits and signed by myself.

Q. That is, minutes of the Rigid Steel Conduit Section of National Electrical Manufacturers Association of November 20, 1931?

A. Yes, sir.

Q. I show you documents marked for identification as Commission Exhibit 692-Z-123 to Z-125, inclusive, and ask you to state whether or not you recognize that document, and if so as what?

A. That same as previous exhibits, signed by myself.

Q. I now show you Commission's Exhibit for identification—

Mr. McDaniel: We do not have the date, Mr. MacIntyre, on that.

Mr. MacIntyre: September 17, 1931.

By Mr. MacIntyre:

Q. I now show you Commission's Exhibit for identification 692-Z-126 to Z-131, inclusive, and ask you to state whether or not you recognize those exhibits, and if so as what?

A. Of course, these are signed by Hodkinson.

Q. That is F. C. Hodkinson?

A. Yes. I would not like to say that I could recognize those.

Q. All right. We will pass them.

Trial Examiner Norwood: Do you recognize the 840 signatures?

The Witness: Yes, that looks like Frank's signature.

Q. Mr. MacIntyre: I believe that is all.

I will return this Commission's Exhibit No. 692 to Mr. Robison now. Thank you.

(Mr. MacIntyre hands exhibit referred to Mr. Robison.)

By Mr. MacIntyre:

Q. Mr. Walker, I show you Commission's Exhibit 1-A to C, inclusive, and ask you to state whether or not you recognize that document, and if so as what?

A. This, I think, has been admitted by our counsel to be authentic, hasn't it? In other words, I would not like to take a paper like this which looks like the by-laws of one of our associations after we have already studied it and apparently it has been admitted by Bob Walker, our counsel, to be authentic, hasn't it? Isn't that what that stamp means?

Q. He admitted that you had given that paper to Mr. Frascati, investigator for the Federal Trade Commission. I am asking you now what did you give that to Mr. Frascati as?

A. I can't tell you, sir.

Q. And for, at the time.

841 A. Unless my memorandum to Mr. Frascati would show.

Q. You cannot recall whether you told Mr. Frascati at the time that you were handing that paper to him as the by-laws of the Rigid Steel Conduit Association?

A. Couldn't I refresh my memory by looking at that memorandum to Mr. Frascati I wrote.

Q. I do not know whether I have that here at this time, Mr. Walker.

A. Mr. MacIntyre, I do not see this mentioned here. Do you know where it might be? The only reason that I am being particular about this is that I do not want to—(Mr. MacIntyre points to a portion of the exhibit.) Very good, sir.

Q. Did you give Mr. Frascati this document, Commission's Exhibit 1-A to C?

A. I did.

Q. To him, as the by-laws of the Rigid Steel Conduit Association?

A. Yes, sir.

Q. And at what time?

Mr. Stewart: The date is on there.

The Witness: Let's see. This was June 3, 1936.

By Mr. MacIntyre:

Q. And were these the by-laws of that association 842 at the time?

A. I have so stated in this memorandum, and therefore I assume that they are.

Q. All right. Thank you.

Mr. Walker, I am showing you Commission's Exhibit 61-A to Z-86, inclusive. Those papers were submitted by your counsel as genuine, authentic price cards of your company and have been admitted into evidence here as such. Now, I want to ask you if they are all of the price cards that were issued by your company during the period July, 1933 to and including January 25, 1941?

A. Are these cards consecutive from 69 to 84? If they are I can answer you.

Q. I do not believe there is one in there numbered 79. I do not believe there is one in there numbered 83; there is an 83-A.

A. I will say that we did not publish 83 and published 83-A in its place. I would suspect if there is no 79 in here we never issued the card. As a matter of fact, I am satisfied we did not. When card 79 was issued by competitors we reduced our card 78 five per cent, which was the same thing, so we never issued card 79.

843 Q. You quoted the same prices, then, as were shown on card 79, as issued by your competitors, without issuing a card by that number; is that correct?

A. Yes, sir.

Q. Well, what can you say as to card 83, as to why you published 83-A, instead of 83?

A. Sorry to take your time, but I am trying to find out why this might have occurred.

Trial Examiner Norwood: We will take a ten-minute recess.

(Short recess taken.)

Trial Examiner Norwood: The hearing will come to order. Proceed.

Mr. MacIntyre: Is there a pending question?

(Pending question read.)

A. Mr. MacIntyre, I am willing to answer that question more definitely now, if you want me to.

By Mr. MacIntyre:

Q. Yes, if you can, please.

A. Our competitors came out with a card 83, which we didn't feel we could follow. It wasn't high enough. It was at the time when zinc was selling up to seven and a quarter cents a pound, so that we finally came out with a card 83, which listed the price of galvanized and black enameled conduit. That is the reason it was given the number 844 "A" after, to distinguish it from 83, which our competitors had issued.

Q. What happened then?

A. Well, I think they came out with a card 83, which raised the price on both black and white items.

Q. To the level that you had raised it?

A. I don't know whether we initiated card 83-A or not. I am inclined to think we did not.

Q. Well, then you say that whatever is shown on card 83, as published by your competitors, was prompted by your issuance of card 83-A?

A. Yes, sir.

Q. Mr. Walker, I now show you Commission's Exhibit 8-A to C, inclusive, which is in evidence here as having been identified by an investigator of the Federal Trade Commission as a document which Mr. L. R. Quinn furnished him from the files of either the Enameled Metals Company or the Rigid Steel Conduit Association.

I will ask you to state whether or not you recognize that document and if so, as what?

A. In other words, this hasn't been certified by our counsel, has it?

Q. It wasn't secured from your people at all.

A. What do you wish me to state about it?

Q. I ask you if you recognize that document, and
845 if so, as what?

A. Well, I wouldn't like to say that I recognize the document, except that its form looks like the way we used to write our minutes. The chances are, in view of the fact that it is signed—

Mr. Robison: Just one moment. I object to the witness being allowed to state what the chances are.

Trial Examiner Norwood: Give your impressions about it.

Mr. Robison: I would have to object to that, too.

Trial Examiner Norwood: Objection overruled.

Mr. Robison: Exception.

A. It would appear to me, from the form and from the fact that it is signed, even though it is signed by typewriter, that it is a copy of the minutes of the meeting which it states.

By Mr. MacIntyre:

Q. Would you accept it as such, under the circumstances as I have outlined them to you?

Mr. Robison: I object.

Trial Examiner Norwood: The objection is overruled.

Mr. Robison: Exception.

Mr. Stewart: Would you mind letting me look at
846 it one moment, please; maybe I can help Mr. Walker.

(Document handed to counsel.)

A. I am willing to admit it is all right.

By Mr. MacIntyre:

Q. You would accept it as the minutes of the meeting of the Board of Directors of the Rigid Steel Conduit Association of November 20, 1936, as held in Pittsburgh?

A. I do.

Q. Mr. Walker, as Commission's Exhibits 61-A to Z 86, which you have examined, and which your attorney has certified here as genuine and authentic price cards of your company, indicate in them a method of figuring a delivered price quotation through the use of basing point figures at Pittsburgh and Chicago, and the addition thereto of certain freight rate factors.

Now, I will ask you in that connection whether you have secured from any source other than your employees in the office of Walker Brothers, any information which you used and which you in turn passed on to your customers, salesmen, for use in figuring in such delivered price quotations?

A. That freight rate data material, as far as I know, has been in use in the business for a long time, and I would say prior to the time when we became manufacturers in 1928. Where we got those books from, I don't know.

847 I imagine we bought some from Donnelly, but we used to go around to jobbers and take competitors books and pick up the information wherever we could get it.

Q. I show you, Mr. Walker, an exhibit marked for identification as Commission's Exhibit 79 Z 23, a booklet dated November 1, 1933, and I will ask you to state whether you recognize it as a booklet that you have used in figuring delivered price quotations?

A. Yes.

Q. In connection with your price cards?

A. Yes, sir.

Q. Can you tell us from whom you secured the information that is contained in that booklet?

A. No, sir, I could not.

Q. Do you have any thought at all as to the source?

A. I suspect Donnelly probably got it up.

Mr. Houston: If your Honor please, I move to strike that. Anything that Mr. Walker knows, is one thing, but his suspicions and imagination are a different matter.

Trial Examiner Norwood: I think consideration who the witness is and what connection he has had with these entire transactions, he may give us his impressions about these matters.

Mr. Houston: Does that include his suspicions and

848 imagination?

Trial Examiner Norwood: Well, you may cross-examine, and if it proves mere suspicion, I shall strike it, of course, but I shall admit it if there is any substance to it.

Trial Examiner Norwood: On the record. The objection is overruled. Answer the question.

The Witness: Your Honor, I can only say this, in regard to it: we used to pick up this information wherever we could get it; at one time from Donnelly and other times as our competitors would put it out among our jobbers. For me to say where this came from, as to whether some

of this might have been compiled in our office, I can't tell you.

I am going to go back again and say that I suspect that this came from Donnelly. Whether it came from him direct or whether we pinched it off some jobber's desk and copied it, I don't know.

Trial Examiner Norwood: What makes you think it came from Donnelly?

The Witness: Only that Donnelly was supposed to
849 get up these freight bulletins, and I understand he is a house that does that kind of printing.

By Mr. MacIntyre:

Q. Do you recall, Mr. Walker, when you first secured any information from Donnelly regarding freight rate schedules?

A. No, sir, I do not.

Q. Can you approximate the time when you first secured information?

A. No, sir, I cannot.

Q. Was it more than ten years ago?

A. We started in the manufacturing of conduit in '28, and as far as I know, we have always sold in accordance with our present practice.

Q. Well, what about securing of freight rate information; did you secure that from Mr. Donnelly at the beginning of your operations in 1928?

A. No, I wouldn't say so. I would say we copied it out of competitor's books that had been compiled, but I don't know who.

Q. Up to what date?

A. Up to the present time.

Q. That is, you have done it that way, except what information you got directly from Donnelly; is that correct?

A. Well, Mr. MacIntyre, we worked these things out
850 in all kinds of ways. If we find a rate in this book that is not correct, we will go to work and take the correct rate.

Q. Well, I am talking now about the compilation of the booklets. You say that your securing of the compilations occurred in the manner that you have described, and in addition to that, you secured them from Donnelly also?

A. I think that our company has secured some booklets

from Donnelly. We pick up our freight rates from the railroad companies as we go along, day by day. If any information that we have, that has been put in printed form, proves to be incorrect, we go ahead and correct it. That happens to be printed here, and if Donnelly printed it wrong, we would not have used it.

Q. Do you recall the period of time when you secured the freight rate information from the officers of the Rigid Steel Conduit Association?

A. I don't think we would go there for it, Mr. MacIntyre; we might have.

Q. I am asking you if you recall?

A. No, sir, I do not.

Q. Do you know of anything that the Rigid Steel Conduit Association had to do with compiling, distributing or paying for freight rate compilations of any description

851 whatever?

A. From my recollection, no, sir. Counsel has told me there was a time when a conduit association did purchase some of these booklets in quantity and gave them to the members. I don't think it was said whether the members paid Donnelly for them direct, or whether they paid the Conduit Association.

Q. Well, what recollection do you have of such transactions, yourself?

A. I don't have any recollections of them, except as counsel last night spoke to me about them. I would say in this regard that if anything of that kind was done, it was done during George Sicard's either first or second regime.

Q. And what was the period of the second regime of George Sicard?

A. I can't tell you, sir. I will amend that answer by saying that maybe Penn Denton might have had something to do with that.

Q. A. Penn Denton?

A. Yes, sir.

Q. And what position, if any, did he hold with the Rigid Steel Conduit Association?

A. He was the technical director.

Q. Did he also serve as acting secretary at times?

A. Yes, sir.

852 By Mr. MacIntyre:

Q. Do you secure any services from Mr. Denton today?

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A. No, sir.

Q. How recently did you secure service from Mr. Denton?

A. I think Mr. Denton left New York City about a year ago.

Q. You secured some information from him until he did leave New York?

A. Used to consult him all the time, sir.

Q. Now, Mr. Walker, I show you Commission's Exhibit for identification 79-Z-168 to Z-179 and 79-Z-233 to 79-Z-246. I will ask you to state if you recognize those documents, and if so as what? I will state before you answer that your counsel, and the record shows that your counsel turned those in as freight rate compilations of Walkers Brothers Company.

A. Well, I recognize them, sir.

Q. Can you tell us anything about the source of the information contained in those booklets?

A. No, sir. These booklets are the same to me as the other one that you formerly showed me.

Q. You do not recall where your company secures the booklets or the pages in the booklets, or the information contained thereon?

853 A. No, sir.

Q. Do you know now whether you have ever known, that is aside from the point as to whether you can recall, ever known where your company secured that information?

A. Only as I have explained, this information is exactly the same as in the other booklet, and that we get our information wherever we can, pick it up from our jobbers wherever we can get it.

I would also like to say for the past three years I have not been active in executive matters of that kind, so that I am not as familiar in the past three years with how that thing is taken care of in our company as I was prior to that time.

Q. Mr. Walker, do you recall discussing in meetings of the members of the Rigid Steel Conduit Association the matter of diversion of railroad shipments in transit?

A. In a general way, yes, sir, that was one of the evils of our business.

Q. Tell us all about that if you can, that is, as to these discussions concerning that matter that took place during the course of meetings of the Rigid Steel Conduit Association.

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A. Mr. MacIntyre, I can only put it this way, that the practice was the bane of the industry, and we would discuss it. The practice consisted of contracting with a
854 buyer, and if the price went up he would inflate his contract requirements and then divert them instead of to the cities for which they were bought to some other city in order that he might get advantage of a lower price than the one prevailing at the time he wanted a shipment made.

Q. I think you are thinking about a different diversion. I am talking about diversions of railroad shipments in transit after you have shipped them to a man at a particular destination, of diverting them while en route.

A. That is the way he would do it. We would make a shipment to the point to which we agreed to ship the goods, and we found afterwards that he had diverted them, taken them to some other city.

Q. Now, on that type of transaction, I will ask you if you have ever run into a situation where such diversion took place and where your return on such shipment in dollars and cents was any less or amounted to any less than it would have amounted to if the diversion had not taken place.

A. Well, of course, if the buyer did not profit by the diversion he would not make it, because it cost him five or six dollars a car to make that diversion.

Trial Examiner Norwood: He did not ask you that.
855 He asked you whether or not you would receive the same amount in case of diversion that you would have received if the goods had not been diverted; would you or would you not?

A. Of course, shipments that we might make that way, we would receive a certain amount for. Now, if it were diverted to a point further away, he would pay the diversion charge, so we would receive the same, if that is what—but we would not receive the same because he would not divert a shipment unless he wanted to take advantage of a higher market.

By Mr. MacIntyre:

Q. I am talking about that particular shipment though, once that that is under way and you have agreed with the man to take that shipment, placed on the cars en route to him. Now, if that is diverted to any other point, does it result in your receiving any less from your customer on that shipment than if the diversion had not taken place?

A. I would say it does.

Q. Explain your answer.

A. Because basically the reason the man does that is to get a lower price than he would expect to get, or that we would get if he were honest in telling us where the stuff was to go.

856 Trial Examiner Norwood: Well, do you mean by that that you would get a less profit from him than you would from someone else who was paying you the delivery price to that point, is that what you mean?

The Witness: No, your Honor, you see, this practice of diversion—

Trial Examiner Norwood: Now, he is asking you as to one particular transaction. You are selling to A to be delivered at a certain place, and you quote him a certain price, and A diverts it to some other place. On that particular transaction with A would you receive the same amount diverted or not diverted?

The Witness: We would receive a lesser amount, else the man would not ask for the diversion.

Trial Examiner Norwood: On such shipments, Mr. Walker, do you ever receive any less than your invoice from the man who makes the diversion because of the diversion itself?

The Witness: No. We would receive the invoice value, but I come back basically again to the proposition which I think is to be considered if you are going to consider my answer as covering the matter. The buyer would not divert that material unless he wanted to take advantage of a lower market.

857 Trial Examiner Norwood: And would so doing, reduce the amount that you would receive?

The Witness: Yes, sir, it would, because if he did not do that thing, he would buy material from us at a higher price, or he would have to go and buy it from somebody else. Now, then, if we refuse—

Trial Examiner Norwood: And that is, if he bought it delivered to the point to which it was diverted he would have had to pay you more, is that right?

The Witness: That is right.

By Mr. MacIntyre:

Q. But having bought it for delivery at point A, now the fact as to that particular shipment which he diverts to point B, do you receive any less from him on that purchase

of his than you would have if he did not divert it from point A?

Mr. Stewart: Just a moment.

I submit, Mr. Examiner, that is argumentative. You certainly cleared the situation and it is a question now of argument, does he or doesn't he?

Trial Examiner Norwood: Well, I think that this last question here will enable the witness to make his testimony clearer.

Mr. Stewart: Very well.

858 Trial Examiner Norwood: The objection is overruled.

Mr. Stewart: I thought he made it perfectly plain.

The Witness: Your Honor, we receive less money for the sale.

By Mr. MacIntyre:

Q. For the same shipment?

A. Due to the conniving of our buyer on the same shipment,—why would anybody divert a shipment and pay six dollars for the diversion unless there was something in it for him?

Trial Examiner Norwood: Well, could not he gain it some way without gaining at your expense?

The Witness: No, sir; no, sir.

Trial Examiner Norwood: Could not he gain in the matter of the difference in railroad freights without that hurting you?

The Witness: Well, of course, we sell him this material; he makes the diversion.

Trial Examiner Norwood: Answer my question, please, sir.

The Witness: Your Honor, I am coming to it.

When we sell a bill of goods to a man we sell him for delivery to a certain place. Now, we receive, as far
859 as the invoice is concerned that price because we ship it to that place. Now, when that man diverts it we do not know what he does with that freight. I cannot imagine his making anything of it.

Trial Examiner Norwood: But don't you receive the same amount of money on that one transaction in dollars and cents.

The Witness: Your Honor, I cannot agree on it. We do not.

Trial Examiner Norwood: You do not?

The Witness: We do not.

Trial Examiner Norwood: Well, why is that?

The Witness: Because the man does it for the purpose of taking advantage of a lower price which he is not entitled to.

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. Mr. Walker, let us take a situation where the buyer purchases from you a car load of conduit for delivery to point A by rail. He ships it on to his spur. He pays you the delivered price, or pays any part of it to you and the rest of it to the railroad as you have asked him to in accordance with your invoice, but rather than putting the conduit into his warehouse he has it loaded on
860 to trucks and ships it over to point B, where your delivered price is much higher than at point A. Now, as to that diversion of a shipment, has that diversion of a shipment resulted in your securing any less from that buyer on the shipment that you made to him than you understood when you made the shipment that you could get from him?

A. Not in that particular case, no, sir. In other words, if he took delivery of that material and then hauled it across the state line so as to have the advantage of what might be a lower price, it would not make any difference to us at all and he would make a saving. Now, as a matter of fact, if he walked up to our place and carries the stuff back to his place he would make a saving too.

Q. Well, when he asks you to ship it to point A and instead of loading it from the railroad car on the truck he tells the railroad company, just before the railroad company shipped it on to the spur there to reconsign that car to him at point B. Now, do you secure any less for that shipment with him paying to you your invoice than would be the case if he unloaded it on to trucks and shipped it to point B?

A. No, sir, we would not, provided he had not done this thing in order to take advantage of a lower price against an old contract. I know, Your Honor, our business is done that way.

861 Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. In calculating your price card quotations for Philadelphia, will you, after reference to Commission's Exhibit 61, tell us how you do that?

A. We deduct the freight from Pittsburgh to Philadelphia in accordance with the freight books and the freight adder books which are in evidence here.

Q. You deduct the freight from what?

A. From Pittsburgh to Philadelphia. We add the freight from Pittsburgh to Philadelphia.

Q. You do not deduct it, you add it?

A. That is right, sir.

Q. And you add it to what?

A. We add it to the price that is shown on our published cards.

Q. Which is Pittsburgh basing price; is that correct?

A. Yes, sir.

Q. And in doing so, you make the shipment of the conduit from where?

A. Mostly from Conshohocken.

Q. And how far is that from Philadelphia?

A. Twelve and one-half miles.

Q. Twelve and one-half?

A. Yes, sir.

862 Q. Do you, in connection with any freight rate compilations, freight rate schedules or freight rate booklets which your counsel has submitted here, make any effort to figure the freight rate and show thereon the freight rate from Conshohocken into Philadelphia?

A. No, sir.

Q. Why?

A. We sell on delivered price.

Q. Does your customer have any opportunity to know through any information that you give him what the freight rate is between Conshohocken and Philadelphia, which is actually paid to the railroad on shipments that you make?

A. I have no doubt that most buyers of conduit know just what that is.

Mr. MacIntyre: Will you please read the question to the witness?

Trial Examiner Norwood: Read the question.

(Question read.)

The Witness: Yes, he knows about it.

By Mr. MacIntyre:

Q. How does he learn that?

A. Well, I can't tell you.

Q. Do you furnish him with booklets or with invoices showing him what the freight rate is that you pay to the railroad?

863 A. No, sir.

Q. Do you instruct your salesmen to tell him?

A. No, sir.

Q. Do you instruct anyone to tell him?

A. No, sir.

Q. Now, referring again to Commission's Exhibit 79 Z 67 to 79 Z, 71, 79 Z 75, 79 Z 76, 79 Z 78, and 79 Z 80, 79 Z 155 to 167, inclusive, and 79 Z 180 to Z 188, inclusive, and 79 Z 189 to 202, inclusive, and 79 Z 168 to 179, 79 Z 233 to Z 246, and 79 Z 23, which have been submitted here and certified as freight rate booklets of your company by your attorneys.

A. Yes, sir.

Q. Do you vouch for the accuracy of the freight rates which are shown in there, as applying from Pittsburgh to the destination shown; do you?

Mr. Stewart: What are the dates of those, please?

Mr. MacIntyre: 1933 to 1941, I believe.

Mr. Stewart: You are asking Mr. Walker if he vouches for the accuracy of those rates?

Mr. MacIntyre: His company has distributed them as rates used.

Mr. Stewart: But you are asking him if he personally vouches for them?

864 Mr. MacIntyre: Yes, I do.

The Witness: I can't—

By Mr. MacIntyre:

Q. Well, you told us a short time ago that you made sure that you never used a rate but what was a correct rate.

A. This is the evidence of it, sir. There is a bulletin issued from our office apparently, in regard to rates up in Minnesota, and things where we corrected the rates from those shown in the bulletins.

Q. You are referring to Commission's Exhibit, for identification 79 Z 75; is that correct?

A. Yes, sir.

Q. And your company has used those booklets to which I have just made reference and which have been submitted here by your counsel as genuine, authentic freight rate booklets of your company, is that correct?

A. Yes, sir.

Mr. MacIntyre: If your Honor please, I offer these documents into evidence as the freight rate booklets of the Walker Brothers Company. Those are the ones that I enumerated to the witness a few minutes ago.

865 Mr. MacIntyre: Well, I offer into the record at this time, your Honor, Commission's Exhibits 79 Z 23 to 79 Z 34; 79 Z 67 to 79 Z 70, inclusive; 79 Z 71 to 79 Z 74, inclusive; 79 Z 75; 79 Z 76 and 79 Z 77; 79 Z 78 and Z 79; 79 Z 80 to 79 Z 91, inclusive; 79 Z 155 to and including 79 Z 167.

Now, in some of these instances, I have noticed the reporters have not marked for identification the certifications that appear on the back covering sheet. I want that to remain with the documents if they are received in evidence.

Commission's Exhibit 79 Z 168 to 79 Z 179, inclusive, 79 Z 180, to and including 79 Z 202, I offer those in evidence as freight rate booklets of Walker Brothers Company, which they have used in the calculating of price quotations.

Trial Examiner Norwood: Is there any objection?

866 Mr. Robison: The papers now offered, with the exception of 79 Z 67 for identification, appear to be freight rate bulletins and supplements thereto, which have been authenticated over the signature of the counsel for Walker Brothers, and with that one exception I have no objection to them.

79 Z 67 appears on its face to be a supplement of Central Tube Company, and the certificate endorsed on it by Mr. Robert C. Walker, the counsel for Walker Brothers is that he admits and agrees that it is genuine and authentic. I don't object to its being admitted as a supplement of Central Tube Company, but I don't think it should be admitted here without further proof at least as a supplement of Walker Brothers.

Mr. MacIntyre: I offer that one, as well as the others, as freight rate booklets which have been submitted here by counsel for Walker Brothers, as well as identified by an official of that company, as freight rate booklets used

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by that company, irrespective of the fact that on its face it shows the name "Central Tube Company."

Trial Examiner Norwood: Can this witness tell us anything further about that?

867 Mr. MacIntyre: I think his testimony has covered it.

The Witness: May I take a look at that?

(Documents handed to witness.)

The Witness: Mr. MacIntyre, you handed me those papers; there were fifteen; I didn't look particularly at any one of them.

Mr. MacIntyre: Well, I would like, in view of the last statement made by the witness, for him to be certain of the testimony as to what these are; that is, as to each one of them.

Trial Examiner Norwood: You say that your previous remark doesn't apply to this one, Commission's Exhibit, for identification, 79 Z 67? You except that from your statement and the description of those other papers?

The Witness: I am willing to take that. These papers have been authenticated wholesale. It may be that in order for us to get a complete list of the freight rates, we have picked up one of those bulletins and put it in. As far as I am concerned, I would just be quibbling if I took exceptions. I don't know how many of these papers we have authenticated.

Trial Examiner Norwood: Any further objections?

Mr. MacIntyre: I would like to ask the witness a 868 question about that 79 Z 67.

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. Mr. Walker, your counsel was asked to submit to us the freight rate books, compilations and schedules used by your company in calculating delivered prices, and submitted this document, 79 Z 67, to 79 Z 70, to us. It bears the certification to that effect; I mean to the effect that it is a genuine document which he was submitting to us in response to that request.

Would you say, in the light of those circumstances, that that is a document that was used by Walker Brothers in calculating its delivered prices?

Mr. Stewart: Just a moment. The witness has already explained very plainly, in view of the fact that counsel

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certified it, he would be quibbling about it if he didn't accept it. Why ask any more questions about it? I submit the question is improper.

Mr. Robison: I also object, Mr. Examiner, on the ground that the statement by Mr. MacIntyre as to what the certificate on the paper is, is not in accordance with the ceertificate.

Trial Examiner Norwood: I will sustain the objection to the question in its present form. I think the matter is covered, and counsel insists that it is covered. In the
869 absence of any further objections here, I shall overrule the objection made and receive the exhibits as marked.

COMMISSION'S EXHIBITS NOS. 79-Z-23 to Z-34, 79-Z-67 to Z-70, 79-Z-71 to Z-74, 79-Z-75 to Z-79, 79-Z-80 to Z-91, 79-Z-155 to Z-167, 79-Z-168 to 179, 79-Z-180 to Z-202, all correlated numbers inclusive, were offered and received in evidence.

Mr. MacIntyre: I want to ask the witness whether or not he agrees that the document marked in evidence as Commission's Exhibit 79 Z 67 to 79 Z 70, is one that contains information which his company used in calculating delivered prices.

Trial Examiner Norwood: He may answer that.

The Witness: As far as I know, it is all right.

By Mr. MacIntyre:

Q. Well, would you say that that is the fact, in view of the fact that your counsel submitted it here under the circumstances and with the certificate?

Mr. Stewart: I object.

Trial Examiner Norwood: The objection is sustained.

Mr. MacIntyre: Well, if your Honor please, counsel for Respondents, particularly Mr. Robison, has objected to the document on the strength of the fact that the certificate
870 did not go that far, and I feel that I have a privilege—

Trial Examiner Norwood: He has already covered the point. I am excluding that because you have already covered the point and he has told us that he accepted it.

Proceed.

We will recess until 1:30 P. M.

(Whereupon at 12:25 P. M. a recess was taken until 1:30 P. M.)

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871 **Afternoon Session.**

1:30 P. M.

Trial Examiner Norwood: Are you ready to proceed?

Mr. MacIntyre: Yes.

Trial Examiner Norwood: The hearing will come to order.

H. S. WALKER, a witness called for the Commission, having been previously sworn, resumed the stand and testified as follows:

Direct Examination by Mr. MacIntyre—Continued.

Q. Mr. Walker, just before our adjournment there was received in evidence certain freight rate compilations which your company submitted to us and which I believe with one exception you have agreed were used by your company.

Now, I show you those again and also show you Commission's Exhibit 61, the price cards of your company, and I will ask you to use those two and explain to us the application through your use of them in determining the delivered price quotation for Norristown, Pennsylvania, giving us the page numbers to which you make reference for the purpose of computing such a delivered price.

A. I will have to use the freight adder book. Is it
872 here, sir? I would to have that book.

Q. Well, I also hand you Commission's Exhibit 89 and Commission's Exhibit 73-B. If you make reference to either one or all of those, please give us the pages to which you refer in making such calculation as I have asked you to make.

Mr. Robison: Mr. MacIntyre, just to assist the witness in what you have asked him to do, would you mind stating which of the adder books is on the basis of a thousand feet of conduit and which is on the basis of a hundred feet of conduit?

Mr. MacIntyre: He has Number 73-B before him, which is on the basis of a hundred feet; No. 89 is on the basis of a thousand feet.

By Mr. MacIntyre:

Q. And tell us on what quantity and what product you are giving us the quotation for.

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A. Our price would be $7.85 per thousand feet on a car load quantity of half inch galvanized conduit, less 6 per cent to the jobber, if it was sold to a jobber, otherwise net if it was sold to a consumer.

Trial Examiner Norwood: That is delivered at what point?

The Witness: Norristown, Pennsylvania.

873 Trial Examiner Norwood: From where?

The Witness: From our factory at Conshohocken.

By Mr. MacIntyre:

Q. And how did you arrive at that figure?

A. This figure is arrived at by taking the base price of $52.50 per thousand feet, from page 2 of card 84, Exhibit 61-Z-80, to which has been added $2.60, which would be the freight adder on a thousand feet of half inch conduit, as per page 8 of the delivery charge book, exhibit 89. This freight adder would be based on a freight rate of 29 cents, from page 9, Exhibit 79-Z-31.

Mr. Robison: Twenty nine cents per what?

The Witness: Twenty nine cents per hundred pounds.

By Mr. MacIntyre:

Q. Now, you have told us that the delivered price quotation on a thousand feet at Norristown, Pennsylvania, of that product is $55.10?

A. Yes.

Q. Arrived at in the manner that you have stated?

A. Yes, sir.

Q. And do you use a similar method in calculating prices for any other location in the same manner as you did then and in doing so using the factors that are shown in Commission's Exhibit 61 and Commission's Exhibit 79?

874 A. Yes, sir.

Q. Well now, I want to ask you in that connection, Mr. Walker, in making reference to Commission's Exhibit 79-Z-194, you find there the name "Altoona" and in the column opposite Altoona, we see a freight rate of 19 cents and a letter "P". What does the "P" mean to you, as you used it in those columns in that way?

A. "P" means Pittsburgh base, according to the book. It means that the freight rate is from Pittsburgh to Altoona.

Q. And wherever that letter "P" appears opposite

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"freight rate" in these freight rate compilations, it means that it is a Pittsburgh freight rate to the destination that is shown opposite the freight rate there?

A. Yes, sir.

875 Q. There are others that carry the letter "C" opposite them. What does that mean to you?

A. I imagine that means Chicago, doesn't it? Yes, sir, it says so, Chicago base.

Q. It means the freight rate from Chicago to the point shown opposite the rate?

A. That is right.

Q. And in arriving at such rate, you would go through the same calculations that you went through with respect to Norristown here a few minutes ago?

A. Yes, sir, using whatever basing point is the cheaper.

Q. That is the cheaper, as you say, when you take the combination of the basing point plus the freight rate shown to the destination involved?

A. That is right.

Q. Have you ever used your cards, price cards, which are shown here as exhibits,—Commission's Exhibit 61, in any other manner, in calculating delivered price quotations than the manner that you have outlined here?

A. No, sir.

Q. In all of your experience in the industry, have you known any one of your competitors in the use of their price cards, to calculate delivered price quotations in any other way?

A. No, except as the Federal Government might
876 insist on buying FOB mill on a government bill of lading.

Q. When and where has that occurred, to your knowledge?

A. Wherever the government buys something that can be shipped over a land grant railroad.

Q. And when was your last experience of that having occurred?

A. Why, I think it crops up regularly.

Q. I didn't get the answer.

A. I think it crops up regularly. I think the TVA buy that way right along.

Q. The what?

A. The Tennessee Valley Authority.

Q. And how do you calculate the quotations to the government in such instances?

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A. I couldn't tell you, Mr. MacIntyre. It is very involved.

Q. You don't know?

A. We figure a base price and at the regular freight. We give the government credit for the land grant rate.

Q. That is, for the difference between the land grant rate and the commercial rate; is that what you mean?

A. I would rather say I didn't know. I don't figure them; I don't handle those orders. I don't know.

Q. Well, do you know of any instance where you or your company has been involved in such transactions where it has given the Federal Government a quotation of
877 a price FOB mill, without taking into consideration a land grant rate from a basing point to the destination involved?

A. I couldn't answer the question. I am not familiar with those particular details. I am willing to state that the government has asked for quotations FOB a mill. Whether we have ever made them, or whether our competitors have done it, off-hand I couldn't give you that reply.

Q. You don't know of any instance that you can tell us about at this time where they have given such quotations?

A. No, except that I do know it has been done.

Q. Mr. Walker, can you cite to us any instance in which you, or any of your competitors has quoted a price to the Federal Government FOB mill, without taking into consideration, in arriving at such price, from some basing point plus either a landgrant rate or commercial rate to the destination involved?

Mr. Poskanzer: I object to that, your Honor. I think that is the same question the witness just said he couldn't answer. Why keep repeating?

Trial Examiner Norwood: Well, there may be a little difference there. I will let him answer it.

Can you answer that?

The Witness: Your Honor, the only thing that I
878 can say is that I know that there have been times when that thing has been done in the industry. I cannot give you those offhand, where they have occurred. I am confident that the government has bought material FOB plant. For instance, all the material we are now furnishing for these bases we furnish FOB either a mill or a shipping point. In other words, the government does its own transportation.

Trial Examiner Norwood: Is that FOB mill your base price?

The Witness: Your Honor, I would rather not answer it. I am not actively in the sales department. I don't handle these things and haven't the last couple of years.

879 By Mr. MacIntyre:

Q. Well, Mr. Walker, you told us that you knew of some instances where the government has bought f.o.b. mill. Can you tell us whether or not in those instances the price that the government finally paid was calculated through the use of a basing point price with the deductions from some delivered price calculated from such basing point price?

A. It is my impression that the government has bought in two ways, bought f.o.b. mill in which there was no freight included, and bought on a delivered price in which a land grant scheme entered into the picture.

Q. Well, do you know how that the f.o.b. mill price in such instances was arrived at, calculated?

A. I would say that they would be a Pittsburgh price, Pittsburgh base price, and if our company wanted to compete we would have to make a Pittsburgh base price from Conshohocken.

Q. Pittsburgh base plus freight from Pittsburgh to Conshohocken?

A. No, sir. No, sir. In other words, we have to make a Conshohocken base price which would be the same as Pittsburgh base price if we wanted to compete, because we would have all the Pittsburgh manufacturers quoting that price.

880 Q. Can you tell us any instance where you used the Pittsburgh base price in quoting to the Federal government an f.o.b. mill price?

A. No, sir.

Q. Do you have any independent recollection at this time that you have ever done so?

A. I believe that we have, sir, and if we had not I feel sure that our competitors have. I have heard of it being done.

Mr. MacIntyre: If Your Honor please, I move the last statement of the witness that he has heard of it being done be stricken. I want only the witness' knowledge.

Trial Examiner Norwood: I think that the record reflects his degree of certitude there.

The motion is denied.

By Mr. MacIntyre:

Q. Mr. Walker, I show you Commission's Exhibit 318, which is a tabulation of bids which you and your competitors submitted to The Panama Canal Commission, and which were opened June 17, 1935, your bid shown to be $8,188.90. I will ask you to state if you can how you arrived at that price quoted for The Panama Canal in that instance?

A. Well, Mr. MacIntyre, I can only say this was figured in exactly the same way in which I just figured that other illustration for you. I could not tell where the
881 price of $8,188—unless I figured it over—how it was arrived at except under the general assumption that that is the way we figured our prices.

Q. That is, you used the basing point price plus the railroad freight factor?

A. We would use a basing point Pittsburgh price plus an export rate to either Philadelphia or Baltimore, and a published boat price to the Canal Zone.

Q. Do you know any other way that you could have figured that price and arrived at the result that you arrived at other than the method that you have just given us?

A. Well, I would say by reason of the facts that all these bids are the same, it must have been the standard practice else they would not have been the same; that is the reason I say it must have been figured in accordance with our standard practice.

Q. I show you Commission's Exhibit 320, which is a tabulation of bids including a bid of your company as opened by The Panama Canal November 6, 1935, in which you bid $6,190.00. How, would you say, that you arrived at the figure you quote the government in that instance?

A. I say it is figured the same way, sir, on a different price card, apparently the price between the date of that bid and the date of this bid must have dropped prac-
882 tically ten per cent.

Mr. Stewart: What are the dates, please?

Mr. MacIntyre: October 14 and June 17, 1935.

883 Mr. Stewart: Which is which? Commission's Exhibit 318 is what?

Mr. MacIntyre: Commission's Exhibit 318 is June 17, 1935, and Commission's Exhibit 320 is October 6, 1935.

Mr. Robison: You said November.

Mr. MacIntyre: November 6, 1935; that is right.

By Mr. MacIntyre:

Q. Mr. Walker, do you know of any way in which you and your competitors could today, in submitting this to the Federal Government, under seal, as you did in those two instances, arrive at the same degree of uniformity and identity in bids as you did in that case, except through your method of figuring prices as you did here?

A. Oh, I am not willing to admit that the Pittsburgh basing method of selling is the only way by which uniform prices can be put together. It is one.

Q. Well, can you name other ways in which you could have reached the same degree of identity and uniformity as you did here, through the use of any other method?

A. I imagine that there are a great many other ways of figuring uniform prices outside of the Pittsburgh basing method of selling, but I can't answer your question without distorting the picture. This is one method by which 884 it is done. There must be others.

Q. You cannot name the others at this time?

A. No, I am not a dictionary.

Q. Mr. Walker, I show you Commission's Exhibit 342, a tabulation of bids, which you and others submitted to the Navy Department under seal, under date, which were opened May 12, 1936.

I will ask you to state, if you can, the method that you used in determining the price you quoted to the Navy Department at that time.

A. The same old method, sir, no difference. Each of these schedules has a certain amount of material on it. They are figured with the freight rate, add it up and there is the total.

Q. In much the same manner, in fact, in the same manner as you have outlined to us as your calculation of the price from Norristown just a while ago?

A. Yes, sir. You should notice that the bids vary quite a bit.

Q. I am talking about your bid now. We will try to let the others answer for themselves on that. I am talking about your bid.

A. I am just looking for it.

Q. Your bid of $15,676.10.

A. You will notice a great many more that same price.

885 Q. Well, how would you say that that was calculated?

A. In our regular way.

Trial Examiner Norwood: Well, there is a difference there; I notice on one of those schedules a difference in terms, one of them is a ten prox., and the other is five percent fifteen days, isn't it?

The Witness: Yes. The jobbers will take the terms and vary them in order to get a lower price in.

Trial Examiner Norwood: Did that determine the award in any case?

The Witness: It might have.

Trial Examiner Norwood: Did it actually do so in those lettings?

The Witness: I could not tell on those particular lettings, but it very often does.

Trial Examiner Norwood: Is fifteen days a lower bid than the ten prox.?

The Witness: That would be a higher bid. The ten prox. would be longer for the government to get, but the government will take those things into question if prices are all alike.

Trial Examiner Norwood: It might mean less, or it might mean more?

The Witness: You will find on some bids they will 886 quote ten days, twenty days.

Trial Examiner Norwood: In other words, it is delivery on the 29th of the month?

Mr. Poskanzer: The ten prox. means after delivery.

Trial Examiner Norwood: What is that?

Mr. Poskanzer: The ten prox. does not mean ten days after the next month, it means ten days after delivery.

The Witness: It might and it might not, depending upon the purchasing officer.

887 Trial Examiner Norwood: It is the tenth of the month that follows. Go ahead.

Mr. MacIntyre: May I proceed?

Trial Examiner Norwood: Yes.

By Mr. MacIntyre:

Q. Mr. Walker, have you ever used your price cards as shown by Commission's Exhibit 61, freight rate com-

pilations, as shown by Commission's Exhibit 79, in calculating as to whether your discounts would be ten days or twenty days or thirty days?

A. We have standard discounts that are printed on our price cards. We never change them.

Q. But that is a matter entirely aside and apart from the monetary figure that you use in quoting your price?

A. Certainly, sir.

Q. I now show you, Mr. Walker, Executive Order 6767, which is in evidence here as Commission's Exhibit 333. I will ask you to cite to us any instance in which you availed yourself of the opportunity that was afforded under that order in quoting the government as much as 15 per cent below your filed prices prior to the date of the Schechter decision?

Mr. Stewart: Now, of course, you assume—first, I object to the form of the question. It assumes the witness knows the date of the Schechter decision. Being a 888 layman, I assume he does not carry that in his mind.

In fact, I would like for Mr. MacIntyre to tell me the date of the Schechter decision.

Mr. MacIntyre: May 27, 1935.

Trial Examiner Norwood: Well, I think that possibly the witness could remember the Schechter decision.

Mr. Stewart: He may remember the decision, but how about the date, and that would be important.

Trial Examiner Norwood: Well, I think most business men interested in codes would remember that decision.

Mr. Stewart: Yes, but the date is another matter.

Trial Examiner Norwood: He can remember sufficiently to testify as to whether something happened before or after that occurrence.

Mr. MacIntyre: Well, at least we have fixed the time anyway, so he does not need carry that in his mind.

Mr. Stewart: All right. Prior to May 27, 1935, is your question, sir?

Mr. MacIntyre: Yes, that is the question.

The Witness: As I understand you want to see whether we ever took advantage of this.

By Mr. MacIntyre:

Q. And quoted the Federal government prices in your sealed bids during the time of your code, bid any amount below your filed prices up to 15 per cent?

889 A. I could not tell you, sir. I do not remember that far back. I do remember at the time there was an executive order came out by which the President said you could quote the government 15 per cent lower than anybody else. Whether any advantage was ever taken of that I do not know.

Q. You do not know of any?

A. I have no knowledge. If it was it was used as an excuse to cut the price.

Q. Mr. Walker, do you know how this Pittsburgh price of $5.25 which you used in calculating the delivered price for Norristown, Pennsylvania, earlier today, was made up or arrived at?

Mr. Stewart: Now, I object. Do you mean the formula or how is the Pittsburgh base arrived at, is that what you are asking?

Mr. MacIntyre: I am talking to him now about the $5.25 word "basing price" which is shown on Commission's Exhibit 61-Z-80.

Mr. Stewart: All right.

Mr. MacIntyre: $5.25 per hundred feet.

The Witness: I think that represents our card 84, doesn't it? You have the papers there. That is what it was taken from?

By Mr. MacIntyre:

Q. That is right.

890 A. I can't tell you how the figures, the base price is arrived at on card 84. My recollection is that one of our competitors put that card out. We copied it. I can't tell you that here, sir.

Q. You have used that card in calculating your delivered price quotations, though?

A. Yes, sir.

Q. What about card 76, the one that was in effect during December, 1937, and which is shown by your price card in evidence here as Commission's Exhibit 61-Z-25 and Commission's Exhibit 61-Z-26, the basing point price on sheradized half inch $5.71, how was that arrived at?

A. I could tell you off-hand, sir. I would have to go into our office records to find out.

Q. Well, what is the basing point price generally speaking, Mr. Walker?

A. The price which a manufacturer expects to get for

his product without the freight involved, he either makes it up himself and takes a long stab at the market, or he goes to work and copies somebody's card which he thinks is more satisfactory than the one he has been using.

Q. Well, in those instances where you have named the basing point price and your competitors have copied that, how do you arrive at the figure that you put out in such instances?

A. We figured our cost largely predicated on what price we pay for pipe.

891 Q. Well, do you get that amount on all of your shipments to Altoona and to Philadelphia? Is it all the same?

A. It is, unless the price is cut. In other words, we have to meet competition in order to stay in business. If somebody cuts a price, we meet it.

Q. Are you telling us?

And do you want us to understand, Mr. Walker, that when you put on a basing point price to be applied at Pittsburgh that it amounts to—

Trial Examiner Norwood: I think we will take a ten-minute recess. Perhaps then the bell will be through ringing.

(Short recess taken.)

Mr. MacIntyre: May we go ahead?

Trial Examiner Norwood: Proceed.

By Mr. MacIntyre:

Q. Mr. Walker, when you used this method of calculating delivered price quotations through the use of price cards, such as your Exhibit 61 here, and freight rate charges, as is shown by Exhibit 79, you have known that competitors of yours were figuring prices in a similar manner in arriving at their delivered price quotations, haven't you?

A. Yes. But, of course, Mr. MacIntyre, what we do is to use that as we call a base price, and then we give a discount, maybe five, ten, fifteen, twenty per cent to

892 meet competition. In other words, just because we have a uniform basis, we will say, of figuring a price, it doesn't say that that price is uniform.

Q. What about these on the bids to the Federal Government that I showed you, how did you arrive at those

where you were giving discounts more than those shown, or don't those show?

A. At that time maybe competition wasn't such that we had to give any discount.

Q. What do you mean that competition was such that you didn't have to give a discount?

A. Any time a bid goes into the government, it is published, everybody gets it. The next time he bids, he is guided by the one that is put in the time before, and he tries to make a price that maybe will be slightly under or the same thing, but he doesn't keep on voluntarily using his price card if he knows he can't get any business by the use of that card.

Q. Is it you thought now that these identical bids which are shown by those exhibits and extracts and tabulations and bids that I showed you, were not figured through the use of the basing point formula?

A. I would say they were figured through the basing point formula and they weren't further cut, except as the figures would show they were cut. In other words,
893 you can go down that list and if you see five or ten that are at a certain price, you will know that was in accordance with the published prices. Anybody who quotes less than that will know he cut those prices for the purpose of trying to pull the order.

Q. Well, you knew when you were submitting bids to the Federal Government, which you figured out in the manner that you have described here, that your competitors were figuring bids in a like manner to the Federal Government, as well as figuring their prices generally in that way, didn't you?

A. Why, yes, that is the prices they publish. That is the prices they say they are going to use.

Q. Well, you had knowledge of that, didn't you?

A. Certainly. In other words, when they put the price out, we immediately see those prices in our jobbers' hands, and we know that is going to be their price.

Q. Well, now, in quoting your prices, figured as you have shown us that you figured them to your customers in Norristown, why do you use the Pittsburgh base in figuring those rates rather than a base at Conshohocken?

A. Because that is the way it has always been done.

Q. And do you do it purely because that is the only way in which it has been done?

894 A. Yes, sir.

Q. Do you have any other reason?

A. It is a pretty good method of selling. It seems to satisfy our trade, the buyers or competitors.

Q. Well, when you use that method and you know that your competitors are using the same kind of method in figuring their prices, even though you and they submit your quotations under seal, you can anticipate what their prices are going to be submitted in bids, can't you?

A. Not necessarily, if they stick to what they publish as their prices, they will all be identical. If they don't, they won't be.

Q. And if they do stick to that, you will know what they are going to be even though they submitted them under seal?

A. We only know as to what prices they publish.

Q. But if they stick to the publication that they put out as to how they are going to figure their prices, on the basis of the Pittsburgh base, you can tell before the bids are opened what the bids are going to be?

A. Not necessarily.

895 Q. If they stick to that you can't tell it?

A. If they stick to it, it is all right.

Q. But if they adhere to the Pittsburgh base, plus the freight, you can tell before the bid is opened what it is going to be.

A. If they stick to the method which they publish, we can tell what the price is going to be because it is all published.

Q. Before the bids are opened?

A. The government and everybody else.

Q. And before the bids are opened?

A. Sure, everybody knows it, but if you will refer to both of these schedules you showed me you will find some fellows who went to work and quoted lower prices than that. We did not know what they were going to do.

Q. But it is only in those instances where you have a departure from the published basing point price, plus freight, that you don't know what they are going to do; is that correct?

A. Yes.

Mr. MacIntyre: That is all.

Trial Examiner Norwood: Cross-examine him.

Cross-Examination by Mr. Stewart.

Q. Mr. Walker, Mr. MacIntyre called your atten-
896 tion to your method of selling and used the term "re-
stricted" sales territory or language to the same effect. Will you explain exactly what you meant by that in saying that you had a restricted sales territory, and the reason for it?

A. Of course, we have a freight situation. Our mill being located in the East, entails quite a freight loss if we ship to the West, so naturally we try and pick our business where we have the advantage of our freight position.

Q. Now, generally where is your market then?

A. On the Coast, Atlantic Gulf and Pacific.

Mr. MacIntyre: Just a moment. I don't think that the question can possibly call for an answer that would be clear unless we know what is meant by the word "market". Are we talking about a competitor's market or are we talking about the location of a market, or just what are we talking about?

Trial Examiner Norwood: You can bring that out on your redirect.

You consider "market" in the generally accepted meaning of the term there in your answer, did you not?

The Witness: We consider our market to be that in which we can make the most money from a freight angle, and there is also a competitor's angle to it.

For instance, in New York an account is always sold for
10 per cent less than it is in any other part of the
897 country. In Chicago it is worse. They don't have a
market in Chicago. They have these price cards and things that they figure. That isn't what they sell at. It looks to me that the conduit industry is being blamed for a program which it really doesn't use except as a starting point. It doesn't have much to do with what we quote.

By Mr. Stewart:

Q. Well, Mr. Walker, based on your experience in the conduit business during the time you have been in it, what if anything has been the significance of the price cards from the standpoint of what was actually charged for the product?

A. I think the price cards haven't anything to do with the price except that maybe for two or three weeks after

they are published they are adhered to and the market will start to slide off until we come along to a condition such as we have been with defense, where there is so much business there is no use in cutting prices.

Trial Examiner Norwood: Make your answers factual in testifying, don't theorize, tell actual experiences.

The Witness: Well, when the NRA went into effect, I forget what card was in existence, but the price was four-fives off, which is equivalent to about 18 per cent. The day after NRA became an institution that four-fives was knocked right off the prices on the cards.

898 By Mr. Stewart:

Q. Then after NRA, what happened, did you go back to the same old situation? —Strike that out.

After NRA, what was the condition?

Mr. MacIntyre: Just a moment. This witness is going to tell us what prices are. I serve notice now that I am going, before we complete our examination with him, to require some records for redirect examination. We did not ask him about prices other than what we have got in evidence, and unless he and his counsel here now engaged in cross-examining him are prepared to bring out records so as to clarify what is now being brought out on cross-examination, we are going to lose an awful lot of time involved in motions to strike testimony that can't otherwise be supported.

899 Mr. Stewart: Well, that is all very interesting, but Mr. Walker, will you please answer my question?

Trial Examiner Norwood: Answer the question.

A. I would say that the conduit industry has always been a highly competitive industry and that aside from the fact that published prices were done so on a Pittsburgh basis, they had nothing whatever to do with the price which has been secured for conduit.

By Mr. Stewart:

Q. You were asked about your method of selling, which apparently, according to Mr. MacIntyre's question, as I understood it, with exceptions, you confined your sales to the territory east of Altoona.

Will you explain the nature of the conduit business, that is, with reference to the necessity for your selling, let us say, in San Francisco or some other place, so that that is clear on the record? Why do you sell out there?

A. Of course, we try and sell in a market in which we get the greatest returns for our money. That can come either from a freight situation or it can come by reason of our selling to a class of trade who want maybe a better article and are willing to pay for it. Maybe our product is better than some of the others. Maybe our methods of coating are better. So that we try and get our market from a freight position as well as from the desirability of
900 the sale.

Now, as a matter of fact, we would rather sell on the Coast, because we get full freight from our plant to destination. If we were to sell west of Altoona, we wouldn't get our freight money back, because a man can go to work and buy from Pittsburgh and pay no rates. If we want to sell in Pittsburgh, we have got to pay the freight from Conshohocken to Pittsburgh, so naturally we don't sell there.

Trial Examiner Norwood: Then these restrictions you speak of are determined by the competitive conditions?

The Witness: Competitive and actual conditions.

Trial Examiner Norwood: Any agreements with respect to restrictions of territory?

The Witness: Absolutely none.

By Mr. Stewart:

Q. Now, will you explain the method by which the various cards are brought out; how was that done?

A. Well, those cards which are brought out and show a price lower than that current, usually come out by somebody who gets provoked at the prices that are being quoted, and he makes up his mind maybe he will clean the market up by putting out a card at a price which has become competitive, and of course, we can't sell at a price any lower than our competitors can, and therefore, when he
901 brings out a card we meet that card.

Now, then, after that, the vicious cycle starts a little bit and somebody gives it two and a half off, and somebody gives it five, and maybe she takes another slide, and the same thing happens over again.

Now, when it comes to a higher card, most of those are brought about by reason of the price of pipe increasing. The cost of pipe is about half of the cost of conduit. The minute the price of pipe goes up, the cost of conduit has to be equally as much or more.

Now, it may be if a market gets tight, it may be that some manufacturers may think they can get some more money and are entitled to some more money for the product. They come out with a higher card. We, of necessity, must follow or we would be swamped with orders and we would not be able to handle them, and we would lose our trade. So we immediately meet the higher card.

In other words, we have got to meet a higher card or we have got to meet a lower card for self-protection.

Trial Examiner Norwood: Suppose a fellow decides not to meet the cards, or conditions do not justify the rise, and a competitor gets out a card, what do you do then?

The Witness: Your Honor, I can't conceive of anybody in the conduit business putting out a card that wouldn't
902 be more or less justified.

Trial Examiner Norwood: Suppose you didn't want to follow?

The Witness: Then you wouldn't do it and we would immediately be flooded with business that we couldn't take care of, and the minute we would take that business and not ship to our trade, they would leave us, and we would lose our distribution, which, after all is said and done, to a conduit manufacturer is the most important asset that he has.

Trial Examiner Norwood: Do those cards set a time in the future when they become effective?

The Witness: As a rule, yes, sir.

Trial Examiner Norwood: How long?

The Witness: Well, they are usually made effective on the 25th of the month. The reason for that is that all consigned stock reports are called for on the 25th. All consigned contracts contain a clause that the jobber shall be entitled to the lowest price in effect during that reporting period. So that, if you made a card effective in between the 20th and the 25th, it couldn't become effective until the 25th, or the next reporting day. I would say as a rule they are always made effective on the 25th of the following reporting period.

Trial Examiner Norwood: Go ahead.

903 Mr. Stewart: Mr. Reporter, will you be good enough to go back to the answer that Mr. Walker made to my question? I think you will find in the early part of the answer that he used the word "lower" when he probably meant "higher."

(Answer read.)

Trial Examiner Norwood: Proceed with the examination.

By Mr. Stewart:

Q. Did your company issue all the cards which were issued between, let us say, 69 and the current card, 85, do you remember?

A. No. In other words, I don't think we issued a card 79. 79 was five per cent lower than 78 and we simply took our card 78 and cut it five per cent and didn't issue a new card. I think there was a card that we did issue that was abortive. I don't remember the number.

Mr. Poskanzer: 83, wasn't it?

Trial Examiner Norwood: Well, do these cards usually vary between each other by percentages?

The Witness: No, your Honor, they usually vary by dollars per ton. That might happen to be percentages, but the manufacturer doesn't go that way, he goes by tonnage and changes it into dollars.

By Mr. Stewart:

904 Q. Mr. Walker, reference has been made to the freight adder book. Will you explain the function of that book, just what part it plays in your business, or what you use it for?

A. Well, a freight adder book simply is used for the purpose of converting a freight rate into dollars per ton. It saves all that time. It can be done by office clerks, whereas if anybody would stop to figure that thing, it would take an expert to do it, and then he would make mistakes.

Q. So, conduit is sold on what unit?

A. It is either sold on a hundred or a thousand foot. As a matter of fact, the cards have always been kind of balled up. Some of the manufacturers quote in hundred feet and some quote in thousand feet. I notice in our cards, in some cases, we quote in hundred feet, and in some cases we quote in thousand pieces.

Q. Now, freight of course is calculated on the basis of per hundred weight?

A. Freight is calculated on per hundred weight and converted by some manufacturers into a thousand feet and by some manufacturers into a hundred feet.

Q. And is it not a fact that the freight adder book performs that function for you?

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The calculation has to do with the particular size of
905 conduit involved?

A. That is right. It simply saves time figuring each time you make a quotation.

906 Q. Now, with reference to these freight schedules, so far as you know when those freight schedules come out they are the correct freight rates as published by the Interstate Commerce Commission?

A. Yes, sir, the minute we find they are not, we correct them.

Q. Do you recall whether your company ever knowingly used an incorrect freight rate?

A. No, I don't know. I can't remember one. Sometimes you call the Pennsylvania Railroad and they will give you one rate to a destination, and the Reading will give you a different one, and neither will guarantee the rate he gives you.

Q. My question was as to whether your company knowingly used a wrong rate?

A. No, we do not. We do everything not to.

Q. You were asked by Mr. MacIntyre with reference to the effect of the diversion of conduit in transit. I want to ask as to whether or not your answer applied to specific building job contracts?

A. Practically wholly, yes, sir.

Q. It is in those instances in which the advantage is taken of the manufacturer?

A. They are the only instances that I can think of.

Q. Could you give us any example in your own experience, whether recently or otherwise, as to a situa-
907 tion in which this condition existed? Do you have any recent example in mind or any others?

A. You mean of a specific building contract diversion?

Q. Yes, diversion or over-buying.

Mr. MacIntyre: If Your Honor please, just a moment.

The Witness: I can't give you one—

Trial Examiner Norwood: Wait a minute.

Mr. MacIntyre: Mr. Stewart has been using a new term here. We don't know the meaning of it, and I submit that the record should be made clear as to what is meant before the witness is permitted to answer, and that is the term "over-buying". Over-buying what, and what is the meaning of it? The record doesn't show.

Trial Examiner Norwood: I think it is very clear. The

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objection is overruled. You can make it clearer on redirect examination. Go ahead.

The Witness: I would imagine half of the specific building contracts that we sell which are, as a rule, sold on a price rise are overloaded with tonnage, doubled or tripled or quadrupled among manufacturers, and if the industry doesn't find a way or can't find a way to check those things they would have to go out of business.

Mr. MacIntyre: I move to strike that answer. It is speculative and conclusive as to what would happen if
908 something else doesn't happen. I ask Your Honor to have it read.

Mr. Stewart: I would like to ask one more question.

By Mr. Stewart:

Q. Has that condition in fact existed in your experience in the conduit business?

A. Yes.

Trial Examiner Norwood: The objection is overruled. Go ahead.

The Witness (Continuing): You asked for specific instances, and I would be rather ashamed to tell you because they usually exist.

Trial Examiner Norwood: Well, do—

By Mr. Stewart:

Q. Without naming names, would you care to give us them?

A. Yes, I will take the Metropolitan housing job. The Metropolitan housing job in the first place was bought from three different manufacturers although I will admit it was intended to be split up that way. I think there were 250 cars bought and about 75 cars used.

Trial Examiner Norwood: That is what you meant by "over-buying", is it?

The Witness: Yes, you might call it over-buying. It is over-specifying. It is over-contracting for something, always with the thought in mind that they will have a chance to use it when the market goes up. If the market
909 goes down, they will cancel the contract and buy it from somebody else at a lower price.

By Mr. Stewart:

Q. Well, now, in your experience, can you give us any instance as to what happened in connection with a diversion transaction, diversion in transit transaction?

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A. Well, now, in New England. New England is a territory which does a good deal of that. In a job to Boston, I will not mention any names—there are plenty of them. We go to work and contract for maybe a hundred tons of material for use on a specific job in Boston. If the price goes up and he does not need that material he will order that to be shipped if he thinks he can get away with it, to some other place, and if we won't do it he will order it shipped to his place in Boston, and then he will order it diverted in the meantime. It is a common practice in New England. It is done other places, too. I may say this, Mr. Stewart, that on the last price increase we had orders for 975 tons of specific building jobs in the New England territory. After checking them we finally took 225 tons out of the 975. The rest were all fictitious.

Q. That was your own company, I take it?

A. That is our own company.

Q. When you say "we" you mean your own company?

910 A. Yes.

Q. I do not know whether you made quite clear in your answer to Mr. MacIntyre's question as to the nature of Penn Denton's duties. I think you said that he was the technical man. Do you recall what his title was?

A. Penn Denton was, I think, he was called engineer. He might have been called technical engineer, but I do not think so. He was called engineer, of the Rigid Conduit Institute. His duties were to advance the merits of rigid steel wiring systems, to visit the different cities around the country and keep them from lowering the ordinances to prevent the use of rigid steel conduits and accept substitutes of cheaper grades of stuff, to meet inspectors, and inspectors conventions, he used to go to six conventions, Atlanta, New Orleans, San Francisco, up North, Chicago, maybe Cleveland, each year. At the inspectors conventions he was supposed to keep those inspectors with a stiff back in connecting with existing ordinances and to advance the sale of rigid conduits versus cheaper wiring methods which in the last ten years the utilities have been trying to get into vogue so they could increase their lighting bill.

Q. Mr. Walker, will you explain to us the difference between conduit, armored cable and e. m. t.; is there a difference between them?

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A. Rigid conduit is made from full weight pipe, 911 and weighs 850 pounds to the thousand feet.

Enamel metallic tubing is made of material so light that an equal footage would not weigh over 50 pounds.

Armored cable is a copper insulated conductor over which is wrapped spiral wrapping, and steel band so that the conductor can't be pulled out of that sheath. And, of course, the conductors can be pulled out of both the kinds of conduit that I mentioned.

Q. Well, would it be correct to say that they are totally different materials?

A. Sure.

Mr. MacIntyre: I dislike counsel just putting the words in the witness' mouth as to whether they are competitors or what not.

Let the witness testify.

Mr. Stewart: I am going to ask him next.

Trial Examiner Norwood: I shall sustain the objection. You should not lead this witness.

Mr. Stewart: I did not lead him. I said would it be correct?

By Mr. Stewart:

Q. Well, from the standpoint of competition, Mr. Walker, what would you say with reference to the point as to whether the articles are in competition with each other?

912 A. Armored cable, for instance, costs one-third as much as a similar installation of rigid conduit, and probably one-half of the cost of installation of E. M. T., so that armored cable and E.M.T. are always trying to take away the Rigid Steel Conduit's business.

Mr. Stewart: That is all.

913 By Mr. Robison:

Q. Mr. Walker, in the early part of your testimony, you were asked what offices you held in the Rigid Conduit Association, and one that you mentioned was that of chairman of what we call the Trade Extension Committee in the Association.

Is that the same committee that we find sometimes referred to in the minutes as the Development Committee?

A. I would think so, Mr. Robison.

Q. At any rate, you did not intentionally make any distinction?

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A. No.

Q. Between what has sometimes been referred to as the Development Committee and the committee of which you were chairman?

A. No, sir. I think the Trade Extension Committee was the main committee there.

Q. What is the practice of your company with reference to prepaying freight on shipments, either consigned stock or directly to purchasers as in the case of specific building contracts? Do you prepay the freight?

A. Well, of course, Walker Brothers, and any other conduit man that sells on a consigned stock basis, must prepay his freight, else he would not own the material.

914 Q. And on the other kind of sales?

A. On the other kind of sales, as far as we are concerned, we have gotten into the habit of prepaying freight and we always prepay freight.

915 Q. In the case of the Rigid Conduit industry, Mr. Walker, and in the case of a shipment where the freight has been prepaid, do you see any opportunity for the purchaser to profit by diverting that shipment to some other destination?

A. The purchaser could not profit by any freight transaction. The only way he could profit would be by taking the material on a contract at a lower market price than that current.

Q. Now, you spoke a moment ago of shipments made to consigned stocks and outright sales. What proportion of your selling of Rigid conduit is done through the medium of consigned stock, approximately?

A. Eighty-five per cent.

Q. Eighty-five per cent?

A. Probably ninety.

Mr. Robison: That is all.

Mr. Stewart: Just one moment.

Trial Examiner Norwood: Well, when freight is prepaid then the invoice is made out for the delivered price to the customer and he pays the full price without any

916 relation to the freight, does he not?

A. Yes, sir.

Trial Examiner Norwood: Then is there any circumstance in which he could profit then by—similarly, he cannot secure diversion under those circumstances, can he?

The Witness: No. It costs him money.

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Trial Examiner Norwood: Now, is there any circumstance under which he could profit, then?

The Witness: Yes, he can profit if the market goes up, by using this lower priced older contract to buy under.

Trial Examiner Norwood: Well, he profits anyway no matter where he moves it or sells it if the market goes up and he has bought it at the lower price?

The Witness: Well, but our contracts are such that he obligates himself not to take material except for that specific job in question and not to divert it to any other building.

Trial Examiner Norwood: Oh, that refers to diverting it to buildings and not diverting it to other railroad points?

The Witness: Yes. Yes, sir, but on diverting it to buildings, if a man buys for use in Boston and gets a job in Hartford, then he starts diverting.

917 By Mr. Robison:

Q. That would involve—

Trial Examiner Norwood: Go ahead.

By Mr. Robison:

Q. Then that would involve a diversion in transit on the railroad?

A. Yes.

Q. If he has a shipment made to Boston and then diverted it to be used in Hartford?

A. They don't do it that way. As soon as the shipment is made and they get the bill of lading, they immediately notify the railroad to divert that shipment and they, having the bill of lading, and they have a right, the railroads have got to recognize that.

Q. That is exactly what I said: if the shipment was made to Boston and then he diverted it in transit to Hartford?

A. Yes.

Q. Then it is a matter of railroad diversion and not merely a matter of diversion between different buildings?

A. That is right.

Trial Examiner Norwood: And when the freight is paid, there is no opportunity for railroad diversion; is that right?

The Witness: Judge, I do not know how that would 918 operate. We prepay that freight. Now, if the freight

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to Hartford was lower than the freight to Boston, and it was diverted from Boston to Hartford, I imagine we would pay that freight to Boston.

Trial Examiner Norwood: But could the consignee divert it?

The Witness: Oh, he can divert it.

Trial Examiner Norwood: In case the freight was prepaid?

The Witness: He could divert it, but I am not sure whether we would be able to get any money back from the railroad if we knew it is diverted. In the first place we would not know, he would not let us know, but if we did, even if it had, I do not believe the railroad would give us back any money anyhow.

By Mr. Robison:

Q. I have just one more question. How long has the consigned method of selling to which you referred, in answer to a question of mine, been in use in your industry, or in your company?

A. Well, in our—to my knowledge it is back to 1912, and when we became identified with that kind of business in 1912, it had been the practice forever and anon, up to that time.

Mr. Robison: That is all I have.

919 By Mr. Stewart:

Q. Now, then, to complete that aspect: I call your attention to Commission's Exhibit 8-A, which Mr. MacIntyre showed you, which has reference to the matter of going over the uniform sales agency contract in the minutes of November 20, 1936.

Do you recall that subject being discussed that day?

A. May I see that? I did not read it, you know.

Q. Yes, sir.

A. Yes, I would say that this is the contract that Blake submitted.

Q. All right. Now, do you recall what was done in connection with that subject-matter, that is, the matter of uniform consigned stock contract, uniform sales agency contract, whatever the term is there.

A. Well, I can only say this: that when the Robinson-Patman Act was passed, our industry was pretty well scared for fear they would sell at a method which was

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not in accordance with the conditions of the Robinson-Patman Act, and we thought that we would have to get counsel in order to try to straighten ourselves out, and that is how we come to be connected with Blake, and Blake's job was supposed to give us a program under which we could operate and in accordance with the requirements of the Robinson-Patman Act.

920 Q. Now, then, you do not know how many of the manufacturers followed the suggestion as to that form of contract?

Mr. MacIntyre: Now, if he knows—I object to the witness going outside.

Trial Examiner Norwood: That is what he asked him.

Mr. Stewart: That is what I asked him.

Trial Examiner Norwood: He asked him if he knows, to tell—tell whether or not you know, in the first place.

The Witness: No, I do not know, but it is my general impression that most—

Mr. MacIntyre: Now, I object to that.

The Witness: I do not know.

Trial Examiner Norwood: I think you had better ask him another question.

By Mr. Stewart:

Q. Now, that minute also has reference to a set of rules for fair trade practice, I think; isn't that the language in the next paragraph?

A. Yes.

Q. Do you know whether any such set of rules were prepared?

A. To my knowledge, it never was prepared.

Mr. Stewart: That is all.

921 Trial Examiner Norwood: Any further questions?

Mr. Houston: I have a question or two, Mr. Examiner.

By Mr. Houston:

Q. Mr. Walker, do you know Frank C. Hodkinson, one of the Respondents in this case?

A. Very well.

Q. You spoke this morning of his having some official connection with the Rigid Steel Conduit Association from time to time. Can you state whether or not Mr. Hodkinson has had any connection with the Rigid Steel Conduit Association since December 1, 1936?

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A. I think that Frank Hodkinson,—I think that the American Circular Loom Company was absorbed by National Electric Products about that time, and when that was done Frank Hodkinson was let out, and I do not think Frank—I do not think he has had any further connection with any business since that time. He is very well along in years, and has not any money to speak of, and he is in very bad health.

Trial Examiner Norwood: Any further questions?

Mr. MacIntyre: I have one or two.

Trial Examiner Norwood: Redirect examination.

922 *Redirect Examination by Mr. MacIntyre.*

Q. At the beginning of your cross-examination, Mr. Walker, you explained how in extending your trade territory, you attempted to quote a price to your customers at the limits of such territory, such as would get your freight back, I believe that is the term that you used, get your freight back. What did you mean by that?

A. So you would not have a freight loss.

Q. Well, what do you mean "freight loss"?

A. A freight loss is paying out more freight than you charge.

Q. From what?

A. From nothing. Freight. If you pay out more money for freight than you get back, then you make a loss.

Q. How do you pay out more freight than you get back?

A. If we ship to Pittsburgh from Philadelphia, in order to meet competition we cannot charge any freight. We would have a freight loss of $5.40 a ton, five and one-half per cent.

Q. Now, you said in shipping into Philadelphia, in order to meet competition. What do you mean by that?

Mr. Stewart: No, no; into Pittsburgh.

The Witness: Shipping it to Pittsburgh.

By Mr. MacIntyre:

923 Q. I mean into Pittsburgh.

A. If we want to sell in Pittsburgh, we would have to meet the price our competitors would name. They naturally would not charge any freight, because it is in Pittsburgh.

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Q. Now, switch that to Philadelphia. How does the getting of the freight back in Philadelphia apply in such instances as that? I mean in such a situation as that.

A. Well, we charge Pittsburgh freight and then we pay freight from Conshohocken to Philadelphia.

924 Q. You get more than your freight in that instance, don't you?

A. Yes, sir, that is called a freight profit.

Q. And why do you charge that freight profit?

A. So as to make money.

Q. Why don't you charge just a little less than your Pittsburgh plus freight to Philadelphia?

A. Well, as I have said this system was set up before I ever was in business, and it seemed to be a satisfactory system both for the seller and the buyer, so we just naturally have gone along with it.

Q. And in doing so, in making this quotation in Philadelphia, Pittsburgh plus, the same as your competitors?

A. Yes, sir.

Q. Now, His Honor asked you about agreements with respect to the restrictions to territory and the like. Do you recall that question he asked you?

A. No, I do not, sir. His Honor raised—

Q. Well, your reply was that so far as you knew there were none, I believe.

A. That is correct, sir.

Q. Well, now, the use of this method of figuring prices that you have just explained, determines the limits within which you sell, doesn't it?

Mr. Stewart: Now, just a moment. I submit that
925 that is not a question. That is an argument and I, therefore, object.

Mr. MacIntyre: I submit it is not an argument. I submit it is not asking for a fact.

Mr. Stewart: It is not an agreement. It is a question of the operation of a particular method of selling. Now, that is an argument.

Mr. MacIntyre: Read my question and you will see that I have asked for a statement of fact.

Mr. Stewart: I know what you are asking for.

Trial Examiner Norwood: Read the question.

(The question was read.)

Trial Examiner Norwood: I think he may ascertain as to whether or not that situation was considered in his gen-

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eral answer about the absence of an agreement. He has the right to get to the meaning of the terms, you see.

The objection is overruled. I will let him answer.

The Witness: Will Mr. MacIntyre, basically what we do is to try and sell in position where we make the most money, the most profit. Now, of course, under the Pittsburgh basing method of selling, that is circumscribed to a certain extent. In other words, we cannot go and sell in Pittsburgh because we have a freight loss. By the same token we can sell on the Pacific Coast and have a
926 freight profit. Now, I do not like to say it is the method that affects it. I say we do not sell in locations where it is not, where we cannot get a profit. The minute we get into a loss we quit.

Q. If it is not the basing price plus the method of figuring the delivered price quotation that affects the territories then what does, that is, affects the limits of the territory and the size of each in which you sell?

A. The other side of the picture is the fact that we have six competitors in Pittsburgh. We have got two here in the East. Now, anybody that wants to buy material in the Middle West can buy better in Pittsburgh, and the Pittsburgh manufacturer can sell him at a profit and whereby if we tried to take that business we could not get either.

Q. Why?

A. Because we have to lose the freight between Philadelphia and his nearest competitor, Pittsburgh.

Q. Why is that?

A. Well, because we have to meet the price that our competitor would make, and he naturally would not include the Philadelphia to Pittsburgh freight, yet we have to pay that freight.

Q. Doesn't all that flow from the fact that they are using a Pittsburgh plus?

A. No.

Q. What does it flow from?

927 A. I say it all flows, first of all, from location.

Q. Location of what?

A. For instance, if there was no such thing as Pittsburgh plus, we could ship it to New York at half the freight price that the Pittsburgher could. We would cop all the business in New York.

Q. That is true of Philadelphia also, isn't it?

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A. Sure. In other words, that is due to our location, but not the Pittsburgh method of selling.

Q. Well, now, coming back to this question of agreement, that method of selling continues without any further written express agreements between you and your competitors; doesn't it?

A. Wait a minute, sir. What is the use of that, of your word "agreement"?

Mr. MacIntyre: Read the question.

Trial Examiner Norwood: Read the question.

(The question was read.)

Trial Examiner Norwood: Answer that if you can.

The Witness: Well, Mr. MacIntyre make plain first what he means by agreement, and second, what he means by any further agreements between us.

By Mr. MacIntyre:

Q. Mr. Walker, considering the fact that you have already testified here today that you and your competi-
928 tors are using a method of figuring prices that you use, and in doing so get the results that you describe, is it now necessary for you to sit down with your competitors and enter into any agreements with them expressly to continue that in order for you and them to continue to get uniform delivered price quotations?

Mr. Poskanzer: I object to that question, if Your Honor please. In the first place it is assuming a fact not proven, that there has been at any time any necessity for any written agreements, whether there have been any written agreements at any time, and it also calls for a conclusion of this witness, not for a statement of fact.

Trial Examiner Norwood: Do you think that the question assumes a prior agreement?

Mr. Stewart: I think it is, it does the way it is asked.

Mr. Poskanzer: It has the words "now necessary". It assumes the existence of a fact.

Trial Examiner Norwood: I think the word "now" would indicate that it has an implication, at least.

Mr. MacIntyre: I disagree. I do not think that it implies other than just what it says.

Mr. Taylor: I would like to add the further objection to that, that Mr. MacIntyre's question deals with a written agreement, and I submit there is an inference of an
929 unwritten agreement in the question there which makes

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it improper. He says is it now necessary for you to have a written agreement. I think that is a very dangerous question.

Trial Examiner Norwood: I think at least there are implications—

Mr. Robison: Mr. Examiner, this pending question is the finest example I have ever heard of an imitation of the classic question, "have you stopped beating your wife yet", and just as in that case it is a question that cannot be answered yes or no obviously.

Trial Examiner Norwood: Read the question.

(The question was read.)

Trial Examiner Norwood: Now, if counsel will strike the word "now" I will permit the witness to answer. If he does not I will sustain the objection.

Mr. MacIntyre: I will be willing to strike that from the question.

Trial Examiner Norwood: Then the witness may answer.

The Witness: That is a terrible question, Your Honor. Thirteen men sat here and said it can't be done. I am a poor—

Trial Examiner Norwood: Now, just wait a minute.

The Witness: I will say "no" to the question.

930 Trial Examiner Norwood: Listen —

The Witness: If I must answer I will say "No."

Trial Examiner Norwood: Are you able to continue this method without any express agreements with your competitors?

The Witness: No, Your Honor, listen—

Trial Examiner Norwood: Well, answer my question, please, sir.

Mr. Robison: May we have your question read, please, Mr. Examiner?

Trial Examiner Norwood: Read my question.

(The question was read.)

The Witness: If I must answer I will say "Yes, of course". We never had any agreements with them, why should I admit that I have to have any now.

You are pretty good, Mr. MacIntyre.

Trial Examiner Norwood: Go ahead.

Ask your question.

By Mr. MacIntyre:

Q. Well, Mr. Stewart asked you about these diversions in transit applying only to specific job shipments.

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Is it your contention, Mr. Walker, that there has never been a case, or that there is no substantial number of cases in which diversions in transit have been affected and no specific job contracts were involved?

931 A. I do not think so, Mr. MacIntyre. I cannot understand why there should be such a thing.

Q. Well, I am asking for the fact as you know it.

Mr. Stewart: You asked if it was his contention, and he said he did not think so.

Mr. King: You asked for a fact and you got it.

The Witness: I cannot testify that such a thing has never happened. I can say that I cannot see why it should happen. In my experience I do not think it ever has.

By Mr. MacIntyre:

Q. And you do not know whether it ever did or not?

A. I know it did not in our company. I can say I cannot see a reason for it and I do not believe it did.

Trial Examiner Norwood: Well, if a wholesaler were inclined to underbid at some particular point in his resale business he could benefit by diversion, could he not?

The Witness: Not unless by diverting he would buy the material cheaper than he otherwise could.

Trial Examiner Norwood: Yes, that is right.

The Witness: That is the only case I can think of.

Trial Examiner Norwood: Could he not undersell the market at a particular point where one of his competitors does business?

932 The Witness: Well, of course, Mr. MacIntyre brought out the thing this morning which, in other words, maybe there is a town on the Tennessee line that takes a 50 cents freight rate, and there is a town maybe two miles the other side in Georgia which might take a 60 cents rate. Now, the man could have the material shipped into that 50 cent point, pick it up by motor truck, take it five miles across the river and save some freight money. Now, he may not do that, because we sell on the Pittsburgh method, maybe we would not sign that to the 50 cent point. He would say ship it to the 60 cent point and he would tell the railroad to drop it off short.

By Mr. MacIntyre:

Q. What injury does that do to you and the other sellers of conduit?

A. Well, of course, it unsettles the market. It means

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that we would be liable under some of the Robinson-Patman Act conditions. In other words, if we say that we are going to sell on the Pittsburgh basing method it seems as though that is what we would have to do until we change, and if we sold one man and let him divert what we will call tonnage, we might be liable for it. We do not like it in our business. We like to run a straightforward business. We do not like to see a competitor resort to tricks like that. We do not like to resort to them.

933 Q. And because of the reasons that you have just given?

A. Well, it is a distasteful way of doing business from every angle. We do not like it.

Mr. MacIntyre: I believe that is all.

934 Mr. MacIntyre: If your Honor please, may we proceed?

I now make reference to Commission's Exhibit 691-F to I, for identification.

Mr. Stewart: That is a minute signed by John S. Patterson, whose signature I recognize and identify, and I accept the minutes as authentic.

Mr. Robison: Mr. Examiner, I would like to ask, if I may, whether Mr. Stewart is under oath, whether he is called as a witness?

Mr. MacIntyre: No, I am merely asking Mr. Stewart as counsel for Enameled Metals Company here, as to whether or not he can make certain statements in the record.

Mr. Robison: Then, as I understand it, it is merely concessions that are being made by Mr. Stewart for his own client?

Mr. Stewart: That is right.

Mr. MacIntyre: Who is Mr. Patterson?

Mr. Stewart: He is president of Enameled Metals.

Mr. MacIntyre: He is the president of the company that you represent here?

Mr. Stewart: That is right.

Mr. Austin: Will you give us the date of those minutes?

935 Mr. Stewart: September 20, 1916.

Mr. MacIntyre: Do any of the other counsel concede the same point?

Mr. Austin: Yes, sir, I do.

Mr. Welch: I will concede it.

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Mr. Taylor: I do.

Mr. MacIntyre: If your Honor please, I now make reference to Commission's Exhibit, for identification, 691 Z and 691 Z 2, and reference to them as minutes of the Interior Conduit Section of the Associated Manufacturers of Electrical Supplies, February 27, 1917, and will ask Mr. Stewart if he will concede that they are authentic and genuine minutes as they purport to be.

Mr. Stewart: The same concession made to the previous exhibits.

Mr. MacIntyre: And do you concede they were signed by the same Mr. Patterson?

Mr. Stewart: I said it was the same concession.

Mr. MacIntyre: I ask other counsel if they will state for the record if they can make the same concession.

Mr. Austin: I do.

Mr. Taylor: Yes.

Mr. Welch: I will concede anything Mr. Stewart
936 concedes, with reference to these minutes.

Mr. Bozeman: I will, too.

Mr. Austin: I will.

Mr. Taylor: I will.

Mr. Robison: I want it distinctly understood on the record, Mr. Examiner, that I am not making any such concessions. I know nothing of the subject-matter.

Mr. MacIntyre: I now make reference to Commission's Exhibit 691 Z 3 to Z 4, and ask Mr. Stewart if he can concede that they are the minutes of the Interior Conduit Section, Associated Manufacturers of Electrical Supplies, for March 14, 1917?

Mr. Stewart: I make the same concession as formerly.

Mr. MacIntyre: I now refer to Commission's Exhibits 691 Z 5 to Z 9, inclusive, and ask Mr. Stewart if he can make concession as to those, that they are authentic and genuine records of the minutes of a meeting of the Interior Conduit Section, Associated Manufacturers of Electrical Supplies, April 30, 1917?

Mr. Stewart: The same concession as formerly.

Mr. MacIntyre: They have stated to the reporter that they join, certain of them, in each of these concessions that you make, and the reporter, I believe, has their names.

937 Mr. King: In behalf of Clayton Mark, I would like the record to show that I would like to look at the exhibits before I take any position.

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Mr. MacIntyre: I now make reference to Commission's Exhibits, for identification, 691 Z 119 to Z 121, inclusive, and ask Mr. Stewart if he will concede they are minutes of the meetings of the Rigid Conduit Section, Associated Manufacturers of Electrical Supplies, dated June 18, 1924, and signed by J. S. Patterson?

Mr. Stewart: John S. Patterson. The same concession.

Mr. MacIntyre: I now make reference to Commission's Exhibits, for identification, 691 Z 126 to Z 128, inclusive, and ask Mr. Stewart if he can concede that and will concede that they are authentic and genuine records of the minutes of a meeting of Rigid Steel Conduit Section of the Associated Manufacturers of Electrical Supplies of August 12, 1924, and as signed by J. S. Patterson?

Mr. Stewart: Same concession.

Mr. MacIntyre: I now make reference to Commission's Exhibits, for identification, 692 Z 83, to 692 Z 85, and ask Mr. Stewart if he will concede that that document is an authentic and genuine record of the minutes of the meeting of the National Electrical Manufacturers Association, 938 Rigid Conduit Section, of June 4, 1930, as signed by George H. Sicard, assistant secretary, by H. S. Walker, secretary, by George H. Sicard, assistant secretary?

Mr. Stewart: On the basis of the information given me by Mr. Walker this morning, that that is Mr. Sicard's signature, I am willing to accept this minute as authentic.

Mr. MacIntyre: Well, you recognize Mr. Sicard's signature at the end?

Mr. Stewart: I don't know whether I can go quite that far. Mr. Walker told me it was Mr. Sicard's signature and I accept his word.

Mr. MacIntyre: If your Honor please, I now offer into evidence the following documents:

Commission's Exhibits, for identification, 691 F to I, inclusive, 691 Z to Z 2, inclusive; 691 Z 3 to Z 4, inclusive; 691 Z 5 to Z 9, inclusive; 691 Z 119 to Z 125, inclusive.

Trial Examiner Norwood: 121 is what Mr. Stewart identified.

Mr. Stewart: 119 to 121.

Mr. MacIntyre: Change that to 121.

691 Z 126 to Z 129, inclusive, 692 Z 83 to Z 85, inclusive, 692 Z 118 to Z 120, inclusive, 692 Z 123 to 125, inclusive, 692 Z 121 to Z 122, inclusive, 692 Z to 126 to Z 131, in-

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939 clusive, 692 Z 134; 692 Z 285 to Z 290, inclusive; 692 Z 292 to Z 298, inclusive; 692 Z 323 to Z 326, inclusive; and 692 Z 332 to Z 334, inclusive.

And ask that they be accepted in photostatic form instead of the form presented here.

Trial Examiner Norwood: Any objections?

Mr. Robison: Mr. Examiner, I object—

Mr. MacIntyre: (Interrupting.) I would like to add this to the offer, before the objection is stated, if I may, Mr. Robison.

I am offering these as admissions of the Respondents, and as records of their activities which are relevant and material to the issues here, and as the minutes of meetings which they purport on their face to be.

Mr. Robison: Before stating the nature of my objection, Mr. Examiner, I think I should indicate that the first part of the exhibits just now mentioned by Mr. MacIntyre are minutes concerning which Mr. Stewart has made certain concessions in which I did not join. The others, if I understand correctly, are exhibits which were referred to in the testimony of Mr. Walker this morning.

As to the first part of my objection, I want to distinguish between those two classes. Now, the only way I can
940 do it will be to repeat the exhibits, although I hate to have to expand the record by so doing.

Referring now to the first class that I have mentioned, namely, Exhibits, for identification, 691 F to I; Z and Z 2 and Z 3 and Z 4; 691 Z 5 to Z 9; 691 Z 199 to 121; 691 Z 126 to 128; and 692 Z 83 to 85—those sub-numbers being inclusive in each case—I object first on the ground that the exhibits are not proved; that they are for that reason incompetent and immaterial.

In the case of the exhibits mentioned in the offer, subsequent to 692 Z 83 to 85, inclusive, I do not make that objection, because of the evidence given in this case this morning by Mr. Walker, in which he identified them.

Now, as to all of them, I make the objection that they are incompetent and hearsay, and for that reason inadmissible as against my clients, and I will remind you that I am appearing here for the Youngstown Sheet & Tube Company and for the time being, at least, also for Republic Steel Corporation, Fretz-Moon Company and Steel & Tubes, Inc.

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941 I, of course, do not question that they are admissible as admissions as against the party or parties who made them. My objection is that as against my clients they are not admissible on any theory; that they are purely hearsay and that if, as I surmise, the purpose of the offer or the reasoning back of the offer is that they are admissible on the ground of admission by one conspirator and therefore admissible against others, my objection is based on the ground that until the existence of a conspiracy has been shown by something other than the admissions of an alleged co-conspirator, the rule referred to does not apply, and I refer again to the rule that you cannot prove the existence of a conspiracy or the taking part in an alleged conspiracy by any alleged conspirator by the admissions of an alleged co-conspirator.

Trial Examiner Norwood: Any further objections?

Mr. Stewart: Mr. Examiner, I object to the minutes not on the ground, of course, of formal proof, which has already been waived by me, but I object to them as incompetent, irrelevant and immaterial, as to any issue in this case.

The second reason for the objection is that the documents show on their face that they involve other parties who are not responsible here and for whose acts these Respondents could not be in any way held responsible.

942 Third, for the reason they are not within any of the issues tendered by the complaint and they are entirely too remote.

Mr. King: If Your Honor please, as far as Clayton Mark is concerned, I don't know whether I have any objections to them or not, but I haven't had a chance to meet them. I would like an opportunity to do so before taking any position. It might be that I have no objection at all to them after I read them.

Mr. Welch: I think Mr. Stewart's objections stand for the rest of us who did not specifically stand and object to them.

Mr. Austin: I assume they are subject to connection?

Trial Examiner Norwood: Yes. Then in that case, counsel has no objection?

Mr. Austin: No, sir.

Mr. Robison: There is one further objection I would like to make, Mr. Examiner, and that is, that minutes are being offered here as a whole, and while I have had no

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opportunity to examine them in detail I think that I am justified in saying that they contain a great deal of matter which in any event would be entirely irrelevant to anything in this proceeding. I think the rules of the Commission should be observed in a case of this sort so as
943 to exclude anything taken into evidence as unnecessary, irrelevant and immaterial in such volume as would be included here.

Mr. MacIntyre: If Your Honor please, I well considered the thought that Mr. Robison has just expressed. For that reason my offer has been restricted to just what I have stated for the record this afternoon, and replacing therefore the offer that I made of the entire exhibits 691, 692 and Exhibit 2 which I made last Saturday. The offer of last Saturday is withdrawn and only the parts which are offered this afternoon are now pending. Consequently, I feel that I have more than met the requirements of the rules of practice, to which Mr. Robison has just made reference, and now if his thought went further that the minutes themselves should be broken up in excerpts taken from one here and an excerpt from another there, I submit that the rule to which he has made reference does not contemplate such, because a document showing a meeting of Respondents with others as a record must be taken in its entirety as reported, in order to stand by itself as a record of that meeting. That is what I am offering here as records of meetings. The portions of them that will be used for one purpose of course will not be used for the same purpose that others of the minutes—for example, the record of those in attendance—would be used.
944 As to Mr. King's objection—and I believe that is also an objection by Mr. Robison—that the minutes involve others than Respondents—

Mr. King: Just a minute. I haven't got any objection at all.

Mr. MacIntyre: I believe Mr. Robison stated that—

Mr. Robison: You will have to refer to Mr. Stewart.

Mr. MacIntyre: Well, anyway, it is an objection that has been raised and I will answer that with this statement: The mere fact that an organization of these Respondents by invitation or otherwise brings into its fold others who may be innocent, for their participation at that invitation most certainly cannot excuse the Respondents, and I contend, therefore, that the record of a meeting under

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such circumstances is just as relevant and material as if none but the Respondents attended and participated.

I believe that objections that have been stated are as broad as could be stated by anyone, and if those that have been stated inure to the benefit of all, it seems to me that except by disclaimer they stand as objections by all under our stipulation.

Trial Examiner Norwood: I ask Mr. King if he
945 stands on his privilege in order to delay the ruling here or may he just take the papers and examine them subject to motion to strike in case he finds something objectionable in them?

Mr. King: I am quite willing to join in the objections that have been made so far except that I would like to examine them to see if I have any additional objections, or to see if I object to those portions that Mr. Robison has objected to on the same ground that he objects to them, namely, lack of qualification. I don't know whether I will object to them on that ground.

Trial Examiner Norwood: Well, we have spent so much time here I think I will give the ruling subject to your right to enter further objections.

Mr. King: That is entirely satisfactory to me.

Mr. Robison: May we be allowed an opportunity to indicate portions of the minutes which seem to us to be clearly irrelevant and to suggest that those be excluded?

Trial Examiner Norwood: I will entertain counsel's motion to strike those after he has time. He can bring that up at any time, to strike any portions of those minutes that he feels should be stricken.

Mr. Stewart: May we also have this understanding that unless I misunderstood, did you offer just a part
946 of any minute?

Mr. MacIntyre: No, all minutes that I have offered here are complete records or as they purport to be complete records of what took place at the particular meetings. I don't say that they are; that they contain a record of everything that took place at the meeting, but at least it runs from the beginning of the set of minutes down through the signature of the man who recorded them.

Mr. Stewart: May we have this understanding, because I think this occurs by reference in the minute. There is sometimes a ruling or some matter of that nature of counsel referred to as a separate document, and if that is not

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included in the offer, may we have the right to object that it should go in, if that is the case?

Mr. MacIntyre: I have no objection, and it wouldn't do me any good if I did have, for the Respondents to offer anything that is necessary as a part of their case to explain the circumstances under which it is properly brought here, anything which is included in this offer which I am making this afternoon, even if reference is made in there to such additional documents or not.

Mr. Stewart: Well, of course, I am relying on the rule that my friends' authority, Mr. Wigmore, lays down in no uncertain terms where you offer a document you must offer it as a whole which includes all documents re-
947 ferred to therein, and I am asking if it turns out that there is a reference in the minute to an accompanying document and we have the right to object, that they should be offered together and not piecemeal. That is all I am asking.

Mr. MacIntyre: I can answer that in this way: That I feel that I have offered everything that we have that is necessary to explain anything that is referred to in the minutes themselves.

Trial Examiner Norwood: I will consider any matters that come up with respect to these things.

Mr. Stewart: That is all I am asking. You may rule against me, I don't know.

Trial Examiner Norwood: You made a motion about connecting documents—

Mr. Taylor: If Your Honor please, I just want to renew my previously-stated objection that Mr. MacIntyre has offered everything that he has which might explain unfounded documents going into evidence. I don't think that is enough. I believe it is improper to admit documents unless they are legally competent, whether he has gone as far as he can or not. If it should transpire that there should be further documents added, I wish to object to the minutes to which they should be added on that ground.

948 Trial Examiner Norwood: If they are seriously incomplete counsel may call my attention to it at the next hearing and we will discuss the matter, but the objections that appear to be impressive are those with respect to binding other companies not mentioned in the minutes here, and we have covered that abundantly by agreement.

All exhibits are received subject to their connection if

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applied to others not named in the document or not connected with it in any way.

949 So I shall overrule the objections and receive the exhibits as marked.

COMMISSION'S EXHIBITS NOS. 691 F to I, inclusive, 691 Z to Z2, inclusive, 691 Z 3 to Z 4, inclusive, 691 Z 5 to Z 9, inclusive, 691 Z 119 to Z 121, inclusive, 691 Z 126 to Z 128, inclusive, 692 Z 83 to Z 85, inclusive, 692 Z 118 to Z 120, inclusive, 692 Z 123 to Z 125, inclusive, 692 Z 121, to Z 122, inclusive, 692 Z 126 to Z 131, inclusive, 692 Z 134, 692 Z 285 to Z 290, inclusive, 692 Z 292 to Z 298, inclusive, 692 Z 323 to Z 326, inclusive, and 692 Z 332 to Z 334, inclusive, were offered and received in evidence.

Mr. MacIntyre: Now, if your Honor please, I would like to ask leave to submit to the reporters at a later date for inclusion in the record, photostats of these in lieu of the original documents.

Trial Examiner Norwood: That hasn't been objected to at all.

Mr. MacIntyre: Is there any objection to that?

Mr. Stewart: No objection.

Mr. MacIntyre: I will be glad to give the reporter a receipt or let the record stand for these documents in

950 these minutes, 691 to 692.

Trial Examiner Norwood: Is there anything further?

Mr. King: Before we adjourn, sometime ago there was a stipulation read into the record concerning freight adders, with the privilege of giving any manufacturing Respondent ten days within which to state that he either did not desire to be bound by the stipulation, or that he did.

In behalf of Clayton Mark, I would like to state we do not desire to be taken in the stipulation.

Mr. Houston: If your Honor please, apropos of that same matter, the name of National Electric Products was not included in the stipulation. As I read it over, I thought that was clear, and I want it to be understood.

Trial Examiner Norwood: Is there anything further?

Mr. MacIntyre: I don't believe so, today.

Trial Examiner Norwood: We will recess until 10 o'clock tomorrow morning.

(Whereupon, at 4:35 P. M. September 29, 1941, the hearing in the above-entitled matter was adjourned.)

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953 PROCEEDINGS.

Trial Examiner Norwood: The hearing in Docket 4452 is now convened pursuant to adjournment on yesterday, the hearing being called to order at 10 o'clock A. M. Eastern Standard Time, September 30, 1941, in Parlor C, 22nd Floor, Hotel Abbey, New York, New York.

Please note the appearances.

I have received a letter from Monroe Byrne and Kaye, attorneys and counsellors-at-law, 50 Broadway, New York, New York, stating in connection with the subpoena left at the office of Mr. George L. Hathaway, 75 Montgomery Street, Jersey City, New Jersey, that Mr. Hathaway is away on a business trip and will not return to his office until late in the week or possibly not until next week.

Mr. King: If your Honor please, last evening I had a chance to examine the portion of Commission's Exhibits 691 and 692 that were offered in evidence by Mr. MacIntyre at the close of yesterday's hearing, and as I understand it, your Honor has given me permission to move to strike any portions of those exhibits that I desire.

I move to strike them all on the grounds stated by counsel for the various Respondents in their objections to those exhibits yesterday, except that I have no question concerning the authenticity of the documents.

954 In addition, on behalf of Clayton Marks, as part of my motion to strike, I would like to point out to your Honor that the minutes show on their face that Clayton-Marks was not a member of the Conduit Section until 1934, at which time the National Industrial Recovery Act was in effect. They do show, some of them, rather, a few of them, that a company called the Mark Company attended one or two of these meetings prior to 1934, but not, however, as a member, and I call your Honor's attention that there is nothing utterly in the record to show that that company had any relation to the present Clayton-Marks.

Mr. Peyser: If your Honor please, in addition to Mr. King's motion, I would like to point out that M. B. Austin was at no time a member of NEMA, the Rigid Conduit Section, or the Rigid Steel Conduit Association.

Trial Examiner Norwood: I think our understanding about this matter covers these situations.

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I shall deny the motion and give counsel his exception.

955 Mr. MacIntyre: I will now call as the next witness at the instance of the Commission, Mr. Frascati.

JOSEPH L. FRASCATI was thereupon called as a witness for the Commission, and, having been first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

Q. Mr. Frascati, will you state your full name?

A. Joseph L. Frascati.

Q. Mr. Frascati, will you please state for the record your business and occupation?

A. I am an attorney with the Federal Trade Commission, doing investigational work.

Q. How long have you been so engaged?

A. Over seven years.

Q. Have you, in connection with your investigational work in that position, made any investigations for the Rigid Steel manufacturing industry?

A. I did.

Q. Did you in that connection call on any officers of
956 the Rigid Steel Conduit Association?

A. I did.

Q. Was one of those officers Mr. H. S. Walker?

A. Yes, sir.

Q. And was one of those officers or employees, Mr. A. Penn Denton?

A. I believe that is correct.

Q. Did you secure any documents from those officials or employees of the Association at the time that you called on them and interviewed them?

A. I did.

Q. I now show you, Mr. Frascati, Commission's Exhibit 1-A to C, and ask you to state, if you know, what that is.

A. That is a set of by-laws of the Rigid Steel Conduit Association, which was handed to me by Mr. Walker on June 3, 1936.

Q. Did he hand those to you in response to any request of yours?

A. He did.

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Q. And what did you request of him?

A. I asked him for a set of the by-laws of the Association which were in effect at that time.

Q. I now show you Commission's Exhibit, for identification, 45, and ask you to state what that is, if you know?

957 A. That is a list of the membership, as given to me by Mr. Walker on the same date, of the Rigid Steel Conduit Association.

Q. Did he submit that to you in response to your request for anything?

A. I asked him for a complete list of the members of the Association as of that date.

Q. And what date was that?

A. That was of June 3, 1936.

Q. I show you Commission's Exhibit, for identification, 49-A to D, inclusive, and ask you to state what that is, if you know?

A. That appears to be a set of minutes from a meeting which I had with Mr. Walker at Conshohocken on the morning of June 3, 1936, in connection with the investigation of this matter.

Q. Who made up those minutes of that conversation that you had with him?

A. As I recall it, Mr. Walker dictated them. It substantially covers the discussions that we had at this office that morning and that was sent to me later through the mail by Mr. Walker.

Q. Does it contain a showing of the statement that Mr. Walker made to you at that time?

A. I believe it does.

958 Q. And Mr. Walker sent this to you as a record he made of the statements he had made to you on that date?

A. That is correct.

Q. Referring to Commission's Exhibit 49-D, what can you say about that?

A. That appears to be the letter which was addressed to me that contained this document.

Q. That is the envelope in which the three pages of the report were sent to you?

A. That is correct.

Q. I now show you Commission's Exhibit, for identification, 5-A to C, inclusive, and tell us what that is, if you know?

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A. It appears to be a set of minutes of the Rigid Steel Conduit Association, dated October 30, 1935, which was given to me by Mr. Denton on June 8, 1936.

Q. And who is Mr. Denton?

A. He is one of the officials that was connected with the Association at that time; A. Penn Denton is his full name, as I recall.

Q. And where was he located when you got these from him?

A. Well, he was located in New York City.

Q. Did you make any request of him at the time which resulted in your securing these particular papers from him?

959 A. Yes, I asked for minutes of the Association that he had in his possession.

Q. And he gave these to you in response to that request?

A. That is correct.

Q. I now show you Commission's Exhibit, for identification, 6-A to C, inclusive. Tell us all that you know about that document?

A. That is a set of minutes of the Rigid Steel Conduit Association dated December 12, 1935, which was turned over to me by Mr. Denton at the same time as the other minutes.

Q. And were they submitted to you in response to any request that you made of Mr. Denton?

A. Yes, I requested a copy of the various sets of minutes which were in his office.

Q. Now, I show you Commission's Exhibit, for identification, 7-A to C, inclusive, and tell us what you know about that document?

A. That is a set of minutes of the Rigid Steel Conduit Association dated March 11, 1936, and that was handed to me by Mr. Denton on the same date as the other minutes.

Q. And was that submitted to you in response to any request that you made of Mr. Denton?

A. Yes. In response to the same request for the 960 other minutes.

Q. That is in response to the request for minutes of the Association?

A. Yes, for minutes of the Association, that is correct.

Mr. MacIntyre: If your Honor please, I now offer into evidence Commission's Exhibits, for identification, 45, 49-A to D, inclusive, 5-A to C, 6-A to C, and 7-A to C, inclusive, all of those parts and numbers being inclusive.

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Mr. Stewart: You are not offering the by-laws?
Mr. MacIntyre: They are in.
Trial Examiner Norwood: Off the record.
(Discussion off the record.)
961 Mr. MacIntyre: I want to say, Your Honor, that in offering these documents that are included in the pending offer, they are offered as admissions and records of these Respondents.
Trial Examiner Norwood: Any objection?
Mr. King: We haven't had a chance to see them, sir.
(Documents handed to counsel.)
Mr. Stewart: As far as I am concerned, I have no objection to any of the documents.
Mr. Gilpatric: Youngstown has no objection other than the standing objection.
Mr. Stewart: Well, I take it that is always in order.
Trial Examiner Norwood: Any further objections?
Mr. King: I haven't finished seeing them.
Mr. Ward: I haven't seen one of them.
Trial Examiner Norwood: The exhibits are received as marked.
Mr. King: May that be subject to a motion when we finish looking at them?
Trial Examiner Norwood: Yes. I think that will shorten the procedure if you do that.
962 COMMISSION'S EXHIBITS NOS. 45, 49-A to D, inclusive, 5-A to C, inclusive, 6-A to C, inclusive, and 7-A to C, inclusive, were offered and received in evidence.
Trial Examiner Norwood: Anything further?
Mr. MacIntyre: Nothing further.
Trial Examiner Norwood: Cross-examine him.

Cross-Examination by Mr. Stewart.

Q. Mr. Frascati, as I understand it with reference to this Walker memorandum, Mr. Walker sent you a document which is now in evidence and I think also a copy, did he not, which you approved and signed and which you returned to him?
A. I don't recall. I don't believe I did. I don't know.
Q. Well, in any event, that is a correct statement of what occurred at that conference?
A. As far as I recall, yes, reading the statement over.

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Mr. Stewart: That is all.
Mr. Gilpatric: No examination.
Trial Examiner Norwood: Any further cross? Proceed, Mr. MacIntyre.
Mr. MacIntyre: I have one question to ask.

Redirect Examination by Mr. MacIntyre.

Q. In reference to this Exhibit 49-A to C, which is the Walker memorandum, you just stated to Mr. Stewart
963 that was a true and correct record of what occurred. Do you mean by that a true and correct record of what Mr. Walker stated to you during the course of the interview?
A. Yes, that is right.
Mr. MacIntyre: That is all.
Mr. Stewart: Just a moment.
Trial Examiner Norwood: Go ahead.

Recross Examination by Mr. Stewart.

Q. Mr. Frascati, after having examined it, do you want to restrict your answer in the manner Mr. MacIntyre restricted it? In other words, I am asking you now if that memorandum does not contain a true and correct statement of everything which occurred at the conference between you and Mr. Walker without regard to who stated what?
A. Oh, yes, that substantially covers our discussion on that morning.
Q. You have no exception to any matter in there?
A. No.
Mr. Stewart: That is all.

Redirect Examination by Mr. MacIntyre.

Q. As to these statements appearing in the first person as to "I stated this" and "I stated that", whose statements are they?
964 A. Mr. Walker's.
Mr. MacIntyre: That is all. May I ask that the witness be discharged without prejudice to recall as having completed this examination as to these matters this morning?

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Mr. Stewart: It is agreeable.

Trial Examiner Norwood: The witness is discharged but may be recalled by either side.

(Witness excused.)

Trial Examiner Norwood: Proceed. Call the next witness.

Mr. MacIntyre: We now call as a witness at the instance of the Commission Mr. McAuliffe.

JOHN E. McAULIFFE was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

Q. Mr. McAuliffe, will you please state for the record the business in which you are now engaged?

A. I am President of the Triangle Conduit and Cable Company.

Q. How long have you been so engaged?

A. Twenty-five years.

Q. That company is the company named as a Respondent here?

A. Not that I know of. I just received this sub-965 poena. I don't know what it is all about.

Mr. Peyser: If Your Honor please, the answer to the Commission's complaint indicates clearly that the Respondent was merged into Triangle Conduit and Cable Company, Inc., a Delaware company, which is the present operating company. Mr. McAuliffe is President of the present Delaware company and he was President of the New York Company from its organization, as indicated in the answer, 1916 to June 30, 1940.

Mr. MacIntyre: I am willing to accept the statement of counsel, if the witness agrees that it is correct.

The Witness: I agree.

Trial Examiner Norwood: Proceed.

Mr. MacIntyre: I will take that as testimony.

By Mr. MacIntyre:

Q. What is the nature of the business of the Triangle Company, of which you have been President for that period of time?

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A. We are manufacturers of all types of wiring materials, flexible conduits, thin wall conduits, rigid steel conduits and the wiring materials of course would include rubber covered wire in its various branches.

Q. What type of rigid steel conduit do you manufacture?

A. Oh, we make heavy wall rigid conduit, I suppose that is the trade name for it.

966 Q. Black enameled?

A. Black enameled, galvanized.

Q. Do you have any particular trade names that you attach to those types of rigid steel conduit?

A. Triangle.

Q. Any others as to the galvanized?

A. Oh, we identify our galvanized as hot-dip galvanized and our black enameled as black enameled.

Q. Where is your rigid steel conduit manufactured?

A. In a town called Moundsville, about eleven miles, I would say, west of Wheeling, West Virginia.

Q. Moundsville is in West Virginia, then?

A. Yes.

Q. Eleven miles west of Wheeling?

A. I would say so. It is in the switching area of Wheeling.

Q. Are your raw materials for the conduit manufactured within the switching limits of Wheeling also?

A. Yes. That is the pipe itself, not the zinc or the black enamel or the various other ingredients that we use.

Q. Well, as to the weight of the raw materials involved, the preponderance of all is manufactured in the Wheeling switching limits?

A. That is the reason we located our plant there.

Q. The enameling and the zinc, that is used, is a very

967 small part of the total weight of the finished product; is that correct?

A. That is correct.

Q. What are the limits of your sales territory of rigid steel conduit, Mr. McAuliffe?

A. That depends entirely upon business, Mr. MacIntyre.

Q. Well, let us take the period of January, 1941, over what territory were you soliciting and selling rigid steel conduit?

A. Well, we solicit steel conduit business under normal conditions wherever steel conduit may be used, whether it is South America, Alaska, Egypt or Arizona.

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Q. Well, is it a correct statement to say that you regularly solicit business for rigid steel conduit throughout the United States?

A. And foreign countries.

Q. And you have done that for how many years?

A. Well, we erected our plant in 1929. Previous to that we had the material made for us by the Fretz-Moon Tube Company. That was in 1926. I would say since 1926 we have solicited business wherever business was available, and that doesn't limit it to the United States or Mexico or South America, it is done all over the world.

Q. About your shipments, in fulfillment of orders that you so solicited, what have been the limits of ship-
968 ments that you have made on rigid steel conduit?

A. I don't understand the question.

Q. The limits of the territory within which you have made shipments?

A. I told you we have shipped all over the world.

Q. We were talking then about the solicitation, Mr. McAuliffe, as I understood it. Do you want your answers to apply to shipments as well as to solicitation?

A. I must understand the questions.

Q. So you are willing to have your replies apply to shipments as well as to solicitation?

Mr. Peyser: I object, if Your Honor please. The witness stated he doesn't understand the question. That is an answer.

Trial Examiner Norwood: Do you understand that question?

The Witness: I do not, Your Honor.

By Mr. MacIntyre:

Q. Well, all the answers that you have given about the territory over which you solicit business you feel should apply equally to the territory over which you make shipments; is that correct?

A. Yes. I have stated to you as a matter of record that we solicit business all over the world, and if we accept an order for shipment to Egypt, we ship it,
969 and if it is to Parkersburg, West Virginia, we ship it. If it is Seattle, Washington, we ship it, providing the credit and everything else pertaining to the negotiation is in order.

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Trial Examiner Norwood: You mean you actually do make shipments to those places?

The Witness: Yes.

By Mr. MacIntyre:

Q. Mr. McAuliffe, your counsel has submitted here, in response to our request for the price cards of your company, documents now marked for identification as Commission's Exhibits 57-A to Z-31, inclusive. Those are duplicates of price cards used by your company in making its delivered price quotations, are they?

A. May I ask what you mean by "delivered price quotations"?

Trial Examiner Norwood: Isn't that term clear to you?

The Witness: These are based on net prices, and the delivered prices would be the freight which is reduced to per thousand feet, based on the actual freight rate, less a cash discount that we allow, which simplifies the whole procedure. These are our price sheets, if that is what you wish me to answer, they appear to be.

By Mr. MacIntyre:

Q. And which you have used in connection with your quoting delivered price quotations; is that correct?

970 A. Well, we have used them, but suggest on the basis of what the industry has experienced for the fifteen years that I have been in it, with the exception of probably two periods, the price sheet was simply a matter of a yardstick.

Q. My question went merely to the use of them.

A. We publish these sheets from time to time showing what we would like to get for our material. In other words, this is what is represented, but we very rarely got it.

Q. We are dealing with quotations now, Mr. McAuliffe; that is, price quotations.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: On the record.

By Mr. MacIntyre:

Q. Mr. McAuliffe, I am showing you Commission's Exhibits for identification 75-B, 75-C to E, inclusive, 75-F, 75-H, 75-I to U, inclusive, and 75-V to Z-53, inclusive.

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Now, Mr. McAuliffe, I will ask you as to those documents, with them being submitted here by your counsel as the freight rate schedules and booklets of the Triangle Company, what can you say about them as to their use of them by the Triangle Company?

A. If these are our published, which I presume they are, if counsel submitted them, freight rates, these are what we regularly use as freight rates in the sale of
971 our rigid conduit.

Mr. MacIntyre: Well, I think Mr. Peyser will state that those are the ones that he submitted.

Mr. Peyser: I want to see them.

Mr. MacIntyre: So that we may remove the "if" from the witness' answer.

Trial Examiner Norwood: That has all been settled and the record shows it. There is no necessity of your going back over it for a re-identification just because a witness said "if". There is no reason for that.

Mr. Peyser: These are the ones I gave you.

Trial Examiner Norwood: Go ahead.

Mr. MacIntyre: Off the record, if Your Honor please.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: On the record.

By Mr. MacIntyre:

Q. Mr. McAuliffe, you have said that you have used these difference exhibits which are marked for identification as Commission's Exhibits 75, and the sub-letters thereof about which we have just spoken, in connection with the business of the Triangle Company. Just how are they used?

A. Mr. MacIntyre, I am only the President of the Company. I don't know how to answer that question.

Q. You are not acquainted with the manner in
972 which your Company uses freight rate bulletins such as those marked for identification as Commission's Exhibit 75?

A. Oh, in a general way I would say that I am acquainted. You are asking me something that I can't answer.

Q. Well, I am asking you to give us all the information that you can.

A. I know that you have price sheets here with a base

price and I know what is written on the back of the price sheet that is subject to published freight adders; that is all part of the record of the price sheet, so why the question, if I am in order asking that?

Q. I am asking you now to give us such general information as you can as to how you make use of these freight bulletins in Commission's Exhibit for identification 75?

A. Those freight rate bulletins represent the actual freight from our Moundsville factory to where the material may go. It is published for that purpose so that the customer may know and figure what his laid down cost is. Certainly we can't absorb the freight, if we did it would be in the price sheet.

Q. I don't like to be technical about these things, Mr. McAuliffe, but you have just stated that these freight rate bulletins marked for identification as Commission's Exhibit 75 contain freight rates from Moundsville. Will you please show me where on any page the freight is
973 shown from Moundsville, West Virginia, to any destination?

A. Well, as I understand the freights from Moundsville, Wheeling, Pittsburgh and so on are identical. I am not a freight authority but I was informed that that is the case.

Q. In other words, you are making that statement on the basis of some statement that some one has made to you?

A. That our traffic department has submitted to me from time to time; that if there is any particular difference it is so insignificant that it is ridiculous. The rate from Moundsville or Wheeling is the same from Pittsburgh, and for that reason we term our so-called price sheet—I don't even know whether we call them that—Pittsburgh base.

Q. Well, now, what about your use of these freight rate compilations, Commission's Exhibit for identification 75, in connection with any quotations that you make to buyers of rigid steel conduit in St. Louis, Chicago or Cleveland?

A. St. Louis, I believe, and Cleveland, would come under what we call our Pittsburgh prices. Chicago would come under our Chicago price.

Q. And in figuring those prices, do you figure freight

on the basis of any basing point price plus freight from Moundsville?

A. In the St. Louis and Cleveland instances the freight would be as per our published sheet, which is the
974 same as freight from Pittsburgh to that destination. The Chicago situation, however, covers a different basing schedule.

Q. And figuring prices to your customers in the Chicago district, how do you figure the price for the buyers there?

A. It is on the price sheet.

Q. I didn't understand it.

A. It is on the price sheet.

Q. Well, explain to us for the record so that we will understand how you use the price sheet in figuring that price for the buyers in the Chicago district?

A. Well, it is published here; it is a Pittsburgh base and Evanston base. Territories that can be more economically handled from one section than the other, we naturally have to be competitive and use that section. For instance, there were at one time several manufacturers in the Chicago area, Evanston. We had to meet that competition and for that reason we published this Evanston base.

975 By Mr. MacIntyre:

Q. What do you mean you have to meet that competition, Mr. McAuliffe? What do you mean by "meeting competition" now?

A. Well, it is—I don't know how to answer that one. You may say how do Macy or Gimbel meet competition with one another.

Q. I didn't understand it.

A. I say, you may say how do Macy or Gimbel meet competition with one another.

Q. That is another question.

A. No, it is not; it is the same thing.

Q. I am asking you now, what do you mean by the term you used "competition"; what do you mean by meeting competition, as you have used it in your answer?

A. Well, competition, as I understand it, is competition. Price competition is one thing, labor competition is another thing, and so on, and if a company which has the reputation Triangle Conduit & Cable Company has,

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don't keep in line with what their competitors may quote on selling prices, or pay for labor, they are not going to exist very long.

Q. Well, then do we correctly understand you to mean when you say "meeting competition," that you are making the prices of the Triangle Company the same
976 as those of your competitors?

A. Well, there you are, injecting something—

Mr. Peyser: I object to that, if your Honor please. The witness stated what competition meant, labor, price and other things.

Trial Examiner Norwood: Finish your answer.

The Witness: Well, I would like to have the question.

Trial Examiner Norwood: Read the question.

(Question read.)

A. I did not necessarily say prices.

By Mr. MacIntyre:

Q. Well, I am asking you.

A. I did not mean necessarily prices. There are—everything; there are many things, there are many angles that enter into the production and sale of this conduit that we, in lay language, term competition.

Q. Price is one of those angles, an element?

A. Price would naturally be one of those elements.

Q. Now, then, directing your attention to that one element, do you mean when you meet competition, that you are making the price of Triangle, of Triangle and for Triangle, the same as made by your competitors at any particular destination on like commodity and quantity?

Q. Well, we will—sometimes we meet so-called
977 prices that possibly never exist; other times we develop the fact that through our various channels—

Mr. MacIntyre: If your Honor please, I submit—

The Witness: May I finish?

Mr. MacIntyre: Just a moment.

The Witness: May I finish?

Mr. MacIntyre: I submit, if your Honor please, the answer of the witness he is giving, is not responsive to the question I asked.

Mr. Poskanzer: I submit the witness should be permitted to complete his answer.

Trial Examiner Norwood: What do you mean when you speak of meeting competition; do you mean making

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the same price as your competitor in that particular field, would that be meeting competition as you understand it?

The Witness: If we developed the fact that a competitor had quoted a certain price, and we felt as though we wanted to meet it in that particular instance.

Trial Examiner Norwood: And when you used that sheet there to meet competition, do you mean by that that you are using that sheet to make the same price that he makes?

The Witness: That is a hard question to answer, your Honor, because some of these sheets were issued at
978 the time we were all in very much of a maze on this so-called Robinson-Patman Bill. Now, I can't answer that unless I go into the details and history of just what the whole industry is, and what we have been up against.

By Mr. MacIntyre:

Q. Well, Mr. McAuliffe, do you feel that you are competitive, or that you are making a competitive price as between your company and any of the other sellers of conduit when you quote a price lower than—if you have ever done so—than they quote to a customer, at any particular destination?

A. I don't get it.

Mr. MacIntyre: Read the question.

(Question read.)

Mr. Stewart: Now, I suggest, Mr. Examiner, that is a double-barreled question and ought to be broken up.

Trial Examiner Norwood: Would you consider a lower price a competitive price?

The Witness: Is that the question, too?

Trial Examiner Norwood: Yes.

The Witness: Consider lower price?

Trial Examiner Norwood: Yes.

979 The Witness: Lower than what, Mr. Examiner?

Trial Examiner Norwood: Lower than your competitor has quoted.

The Witness: No, then we would not be meeting competition. We would be beating competition.

Trial Examiner Norwood: Would that be a competitor?

The Witness: Sometimes they would take you out and shoot you, or think you are a fool, or your stockholders might object.

Trial Examiner Norwood: Proceed.

By Mr. MacIntyre:

Q. Who are you referring you to as might take you out and shoot you for making such a price?

A. My stockholders.

Q. Is it a fact, Mr. McAuliffe, that your competitors have written to you complaining about your having made a price on some occasions lower than they made?

A. If so, I don't remember it.

Q. You only recall such complaints as your stockholders have made?

Mr. Stewart: He did not say that.

Mr. Peyser: He did not say that, if your Honor please.

Trial Examiner Norwood: He is asking him; is
980 that right?

Mr. Stewart: Are you asking a question or just making a statement?

Mr. MacIntyre: I am asking him.

Trial Examiner Norwood: Did you answer the question?

The Witness: Was there a question asked me?

Trial Examiner Norwood: Read the question.

(Question read as follows: "You only recall such complaints as your stockholders have made?")

Mr. MacIntyre: That is the question.

Trial Examiner Norwood: Is that right, or not?

The Witness: How would I—how should I answer?

Trial Examiner Norwood: Well, do you recall any?

The Witness: I do not recall anything, as I have answered the other question.

By Mr. MacIntyre:

Q. You have no present recollection on that matter, then?

A. (No response.)

Q. Now, Mr. McAuliffe, referring to Commission's Exhibit 57-A, which has been identified here as a price card or sheet of quotations of your company, please
981 explain as to how you arrived at the price factors, the figures that are quoted on that sheet?

A. I could not answer that question.

Q. Well, you have a basing point price?

A. Yes.

Q. Listed there, don't you?

A. Yes.

Q. How is it that your company specifies such basing point price in its price card?

A. When this card was issued, I suppose our sales department was made acquainted with this card; when a similar card was issued by a competitor, I suppose our sales department became acquainted with it, and followed it, whether it was up or down.

Q. Because your competitors had issued one of like figures?

A. I would say that the procedure is that when a new price comes out from any of our competitors, within three hours from the time it is received by our customers, that we know about it, and it might be our judgment at the time to follow it, ignore it, or publish something entirely different.

Q. Can you point out to us now any instances where you have issued prices any different from those issued by your competitors?

982 A. Well, the pricing of our merchandise is handled by our sales department, Mr. MacIntyre. I am not familiar with it.

Q. May we take that to mean that you have no recollection of any instance such as I have described?

A. That is—no, I would not say—you haven't put that question properly. I told you my functions with the company, not familiar entirely or in detail with the pricings, the cards issued, and sheets published of our various commodities.

Trial Examiner Norwood: Now, you answered that previous question there; as to whether or not you recall issuing any other price cards that are dissimilar to this which your competitors—do you recall that?

Mr. Stewart: May I suggest, Mr. Examiner, that was not the question.

Trial Examiner Norwood: Well, I will ask him.

Mr. Stewart: You are asking it of your own accord?

Trial Examiner Norwood: Yes.

Mr. Stewart: Does he recall?

The Witness: It is my jurisdiction—

Trial Examiner Norwood: I asked you: do you recall that. Yes or no. You can explain it afterwards.

The Witness: I could not remember.

983 Trial Examiner Norwood: All right.

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By Mr. MacIntyre:

Q. Mr. McAuliffe, I show you Commission's Exhibit 57 Z 15, a price card effective October 25, 1939, card No. 81. Please explain to us why it was that your company specified in that card the basing point prices that it quoted?

A. I can't, Mr. MacIntyre, explain any of the details pertaining to any of this.

Q. Why is it that you can't explain any of them?

A. Well, I have got tremendous duties in the organization, and I can't be fully acquainted with the detail of every branch of our organization that functions. I have various heads of departments that handle that.

Q. Do these duties as chief executive of your organization have anything to do with the policies on price making?

A. Oh, I am brought into conference from time to time, I suppose, as I would be in any other branch of the business.

Q. Who makes decisions in your organization as to whether you are going to change prices at any particular time?

A. It is the general function, according to our organization, that the sales manager, vice president in charge
984 of sales.

Q. You do not make the decision?

A. He makes them for me. I could not remember whether he consulted me on that Card 81.

Q. Who formulates and makes the decisions as to whether you are going to follow a general price policy?

A. That would be the function of the vice president in charge of sales.

Q. The president does not do that?

A. No.

Q. Well, under those circumstances, can you tell us why you use a particular pricing method that Triangle Company now uses?

A. Well, I can explain that to the extent of my knowledge, when I was active, and I even forget that. In the origin of our company, when we went into business in 1926, into the Rigid conduit business, as I mentioned, the Fretz-Moon Tube Company made our conduit for us, under our trade name, and part of the contract with Fretz-Moon was that Triangle would receive compensation from the then acknowledged published prices of certain operators in the conduit industry, and we operated under that contract for

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three years, and I suppose we became acquainted with these various cards. I suppose, I do not know, what was the
985 card number in 1926, but it seems to me that it would be the logical thing for a small company, such as ours, to follow, rather than to lead on the changes of prices, whether they were upward or downward, and I suppose that is what has been done by virtue of the number of cards that have been issued.

Q. Well, if you do not know how your company develops its price policy, who in the Triangle Company would know?

A. At the present time?

Q. Yes.

A. At the present time our vice president in charge of sales.

Q. Who is he?

A. Mr. J. A. Hawks.

Q. And how long has he held that position?

A. Since August 1, 1936.

Q. And who preceded him in that position?

A. Mr. T. C. Gilpin.

Q. Is he alive?

A. Yes.

Q. Where is he?

A. He is in Hawaii.

Q. Is there anyone in your organization, including yourself, who can give us any information as to the price policies and the decisions that were made by your company up to and including 1936?

986 A. Will you repeat that question?

Trial Examiner Norwood: Read the question.

(Question read.)

By Mr. MacIntyre:

Q. Concerning prices.

A. I have made it a practice when I put into our organization a vice president in charge of sales, to make him entirely responsible for that function of the company in that particular field. I never believed that it was policy for the president or the chairman of the board, to be butting in continuously. Mr. Gilpin, I believe, took on the duties, as vice president.

Trial Examiner Norwood: Read the question.

Mr. MacIntyre: I am going to ask that the question be

read, and I submit that the question calls for a yes or no answer.

(Question read.)

A. No, I can't.

Mr. Peyser: If your Honor please, I want to state an objection first to that question, that it is not specific. Does he mean now presently in the organization? He can't answer that question if he don't know when.

Trial Examiner Norwood: Counsel's objection is overruled. Answer the question.

987 The Witness: Will you read my last answer?

(Answer read.)

A. That includes me, as well as anyone else in the organization at this time. No, I cannot, no one else has been there.

By Mr. MacIntyre:

Q. Is it correct to say, Mr. McAuliffe, that if we desired information as to why you made certain price changes as is shown by the price cards that are now in evidence in your company, up to and including 1936, that it would be necessary for us to get Mr. Gilpin, formerly with your company, and who is now in Hawaii?

A. You could possibly—

Mr. Stewart: Wait a minute. May I have that question read?

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: Counsel may clarify it on cross-examination, if he wishes.

Answer the question, whether or not it would be considered necessary to get this man in Hawaii.

The Witness: Well, that would be up to him, your Honor. I do not know whether the man is familiar; I could not say whether he had had a heat stroke, or what. I can't answer that.

988 By Mr. MacIntyre:

Q. Let us go to another subject, Mr. McAuliffe.

By Mr. MacIntyre:

Q. Mr. McAuliffe, who, in your organization, can give us information and details about price changes that have occurred since 1936?

A. Mr. Hawks entered our employ as sales manager and

vice president on August 1, 1936. Since August 1, 1936, I believe he can give you all the information you want.

Q. That is Mr. Julian A. Hawks?

A. Right.

Q. His office is here in Brooklyn?

A. That is right, Horace Harding Boulevard.

Mr. MacIntyre: I ask counsel for Respondent, Triangle Conduit & Cable Company, to arrange for Mr. Hawks to come over as a witness at the instance of the
989 Commission, beginning the afternoon session today.

Mr. Peyser: If your Honor please, as stated to Mr. MacIntyre by Mr. McAuliffe and myself, we stated that Mr. Hawks is not available and may not be in town tomorrow. At the earliest opportunity we will be glad to have him come. Counsel can send a subpoena over and I am sure he will find that Mr. Hawks is not available.

As a matter of fact, he has already subpoenaed Mr. Bibber as a witness. I do not believe on behalf of Triangle Company, but Mr. Bibber is in the employ of the Triangle Company. He will be here this afternoon. You can't have the entire organization here.

Mr. MacIntyre: We do not propose to have Mr. McAuliffe here this afternoon. We are after someone now who can tell us something about the sales policies of the Triangle Company.

990 Mr. MacIntyre: Well, Mr. Peyser, will you undertake to produce Mr. Hawks as a witness at the instance of the Commission either this afternoon, tomorrow, Thursday or Friday of this week, at the very earliest that it is convenient for him to come over?

Mr. Peyser: I have no objection. Yes, I will do that.

Mr. MacIntyre: Will you attempt to do that?

Mr. Peyser: Yes, at the first available opportunity, I certainly will.

By Mr. MacIntyre:

Q. I believe you told us, Mr. McAuliffe, that you did not participate in any of these decisions, details, price changes, sales at particular prices made by your company?

Mr. Stewart: Just a minute. Will you read that question, please?

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Stewart: I submit, Mr. Examiner, that is not a cor-

rect statement of the witness' testimony. The witness said he did participate in some of the conference. I therefore object to the form of the question as not correctly stating the record.

991 Trial Examiner Norwood: I think that the witness could tell us if he did not participate in those things.

Mr. Stewart: No, sir; that is not the point of my objection. The point is that Mr. MacIntyre, as I understand it, is undertaking to quote the record as made today. Now, I am referring to the record, which I say shows that Mr. McAuliffe said in no uncertain terms that he did participate in some of the discussions.

Now, that is all I ask.

Mr. MacIntyre: I would like for the witness to answer the question, or, at least, state whether he can, or cannot, or whether the question incorrectly states the record, without being told by someone else that it does. The witness, of course, has been here and has had these questions put to him.

Trial Examiner Norwood: On the other hand, if you have stated more than is in the record, it would be unfair to the witness.

Mr. Stewart: That is the point.

Trial Examiner Norwood: Yes.

Mr. MacIntyre: I contend I have not, and I ask that the witness answer the question now.

Trial Examiner Norwood: Read the question.

(Question read.)

992 Mr. MacIntyre: That is a question.

Trial Examiner Norwood: Did you tell him that or not?

I will overrule the objection.

The Witness: Do you mean to answer now?

Trial Examiner Norwood: Yes.

The Witness: Will you read it?

Trial Examiner Norwood: Read the question.

(Question read.)

The Witness: Well, that is not correct. The record shows that I answered a previous question wherein I was brought into a conference from time to time, whenever it was necessary in the opinion of the sales department.

Trial Examiner Norwood: Proceed.

By Mr. MacIntyre:

Q. Why is it, Mr. McAuliffe, that you, as president of the Triangle Company, were interested in seeing to it that the jobbers of the Triangle Company maintained their prices to at least a level as high as the prices you charged them on the conduit that you sold to them?

Mr. Stewart: Just a moment, please.

I object to that, for the reason that the question assumes a state of facts, which are not in the record. I have no
993 objection to his asking if that is what the company did, but I submit the question assumes a state of facts which has not been proven.

Mr. MacIntyre: I submit that those facts are in the record, if your Honor please.

Mr. Stewart: Not within the knowledge of this witness.

Mr. MacIntyre: We will see if this witness knows about it.

Trial Examiner Norwood: I think it is unnecessary to incorporate so much in your question of the previous record, and of argument, and things like that, and ask this witness questions that will elicit facts or matters and leave the argument for the Commission and the courts.

Mr. MacIntyre: I am asking him the reason why—

Trial Examiner Norwood: Well, bring out the facts.

By Mr. MacIntyre:

Q. Mr. McAuliffe, have you expended efforts to see to it that your jobbers maintain their prices to a level at least as high as the prices which Triangle charges them for the merchandise it sold to them?

The Witness: I do not understand that.

Trial Examiner Norwood: Read the question.

994 (Question read.)

The Witness: Does that mean me or Triangle?

By Mr. MacIntyre:

Q. Talking about you, Mr. McAuliffe.

A. About me?

Q. Yes.

A. Then you got to go a long ways back.

Q. Let us go back not farther than 1936, since 1936.

A. Since 1936 it has been definitely the problem of the sales department to carry on as they saw fit, the company policy.

Trial Examiner Norwood: Well, what has been the company policy in that respect?

The Witness: Well, could I explain?

Trial Examiner Norwood: Yes, sir.

The Witness: We believe that we have a substantial company. We believe that

Trial Examiner Norwood: Now, with respect to jobbers obtaining—

The Witness: That is what I am coming to.

Trial Examiner Norwood: Resale prices.

The Witness: We publish a price, as I understand it—these exhibits—which is subject to a discount to the jobber.

We consider that a jobber being our distributor, that
995 he really has something, and we do not care for one jobber upsetting—

Trial Examiner Norwood: Now, that is giving the reasons for the policy. I am asking you for the policy, not for the reasons.

What is the policy in that respect?

You have counsel there to bring out—

The Witness: I was asking you. I don't know whether I am on the record or off the record. I am asking you whether I should explain.

Trial Examiner Norwood: No. Just answer my question.

The Witness: We are interested in the functions of our distributors and jobbers maintaining our published prices.

Trial Examiner Norwood: Now, you are not asked that.

The Witness: I forget what I was asked.

Trial Examiner Norwood: What is your policy with respect to requiring, inducing or requesting wholesalers to resell at uniform price or resell at your original price from which you take the discount?

The Witness: Well, I answered that, your Honor. Mr. MacIntyre said something about 1936 and I told him that that was definitely in the hands of our sales department.
996 Now, broadly, as I tried to explain to you, I have a pretty good idea as to what we would like to embody in the franchise which we granted to the stores—

Trial Examiner Norwood: Well, do you know what your company policy is in that respect?

The Witness: Yes.

Trial Examiner Norwood: What is it?

The Witness: We would like to have the distributors follow our published prices.

997 By Mr. MacIntyre:

Q. Have you since 1936 adopted any move to enforce such adherence to your price quotations?

A. The sales department will have to answer that question, Mr. MacIntyre.

Q. Have you personally had anything to do with any effort to see that that is done to any degree?

A. Oh, I suppose so.

Q. Well, tell us about that.

A. Well, as I explained, we have I don't know how many distributors of our merchandise and we publish a price at which we think it will give those distributors a fair return in the sales of our high class merchandise. If we find that we have got a couple of recalcitrants that are upsetting, as we call it, the reputation of our Company and its products, the sales department then takes over and I suppose tells them that they have got to abide by the published prices of the Company or we may under the conditions remove them from our list because they are interfering with the normal distribution and flow of our high-class merchandise.

Q. What have you done to see that your prices were adhered to?

A. Personally?

Q. Yes, since 1936.

A. I couldn't tell you that, probably blown off a lot
998 of steam at times.

Q. You can't recall though what you did blow off?

A. Steam.

Q. Anything else?

A. Blow off the handle or something like that.

Q. Mr. McAuliffe, I show you Commission's Exhibit 460. Is that your signature at the bottom of that letter?

Mr. Stewart: What is the date of that?

(No answer.)

The Witness: Well, that is not my signature but I think I am familiar with the circumstances.

By Mr. MacIntyre:

Q. Whose signature is it?

A. It is my name. I couldn't tell you signed it, probably my secretary or somebody else.

Q. Is that in the form of the steam that you have described that is outlined there?

A. What we are trying to do is influence the building up of the market. I am giving a pep talk and probably the only reason that I am into this is because the Austin Company was a concern that I handled personally.

Q. You have handled all of the business between your Company and the Austin Company directly; is that correct?

A. No.

Q. You have a person in your organization by the
999 name of Miss Gold?

A. Miss E. G. Gold, yes.

Q. What is her position with your Company?

A. Secretary.

Q. And as secretary she handled inter-company as well as inter-office correspondence with your Company?

A. Yes.

Q. Mr. McAuliffe, I show you Commission's Exhibits 470 and 472. Do they represent other instances where you have, as you have described here this morning, blown off steam?

A. I would say that is steam in reverse, wouldn't you?

Q. Well, I am still asking you the question.

A. Well, let's see the other exhibit then.

Mr. MacIntyre: Please read the question to the witness.

The Witness: No, I mean the other exhibit that you just showed me where I was banging.

By Mr. MacIntyre:

Q. I show the witness at his request Commission's Exhibit 460 again.

A. Well, apparently on June 14 I thought that business was going to be all right and I was going along on the steam blowing proposition. I realized on July 30 that it wasn't.

Q. Well, what caused you to realize on July 30 that it wasn't going to be all right?

1000 A. I was apprised, I suppose, by the sales department that the competitive or price conditions or the sale of materials in the conduit industry were pretty low.

Q. You are then advised by the sales department as

to conditions that your Company meets in its sale of rigid steel conduit?

A. Well, naturally I am advised of conditions that go on in the Company and particularly inasmuch as I at that time was probably doing ninety per cent of the Austin proposition.

Q. Well, do you need that in connection with any question that is pending, Commission's Exhibit 472?

A. No, I can answer it all, if that is what you want me to do.

Q. Do you recall the situation that is referred to in Commission's Exhibit 472?

A. I don't recall it in detail. It strikes me that I remember something about this letter. It is not signed by me but it would be my language if I were dictating it at that time.

Q. Well, would you say that it was signed for you after you dictated it?

A. I would assume so.

Q. You can't recall the situation?

A. Yes, sir, I can recall the situation.

Q. Well, tell us about that situation.

1001 A. I will have to go into a little detail. The Austin Company in the first place are not manufacturers. They are what we call ourselves glorified jobbers. We have been manufacturing rigid conduit for them since somewhere in the thirties under their trade name and allowing them a margin on which to operate. If we didn't go along as per those exhibits and keep forcing and keep building them up, they were very apt to destroy our own market for our merchandise.

Q. How would they do that?

A. Well, in their organization we found at that time there were some weak sisters in the selling end. They had a habit of sending in reports of alleged conditions, and Mr. Austin at that time was not a very well man. He was not half the man he was when we made the arrangements with him. Subsequently he died, and he was very apt to believe some of his so-called field reports, and that was the reason that I personally, due to my friendship with Austin, handled the Austin account practically ninety per cent up until after Austin died.

Trial Examiner Norwood: It was a different situation than that between you and the other jobbers?

The Witness: Yes, entirely different. I was at all times trying to build Austin up against the inroads of his organization trying to tear him down because if I didn't build Austin up with a lot of what appears to be bad
1002 English or what-not, I might find that the value of our own products would decrease.

By Mr. MacIntyre:

Q. What was the nature of these field reports that you stated that you felt were not good?

A. Well, you have examined Austin's files and have had those letters and you could probably answer that better than I. I have no access to his field reports outside of what Austin wrote me that he would have a report from Los Angeles or he would have a report from Buffalo.

Trial Examiner Norwood: You mean a report that his competitors were selling lower than they were?

The Witness: Well, I couldn't prove that, but he would build a picture up to me that his man in Los Angeles could not sell this conduit because of Youngstown Sheet and Tube or somebody selling at a lower price. Regardless of whether Youngstown were or were not, if we felt it wasn't policy at that time to meet directly or through Austin that price, I would have to build Austin up with a pep talk and try to kid him out of it, in other words.

By Mr. MacIntyre:

Q. Kid him out of it into what?

A. Well, into this, I guess.

Q. That is, into the maintaining of the price?

A. What?

1003 Q. That is, kid him out of that and into the maintaining of the price?

A. Maintaining of our price. Our contract with Austin called for him selling at our price at all times. If we met the Youngstown price—

Q. (Interrupting.) Do we correctly understand you to mean that you were attempting to convince him that these reports about your competitors cutting prices which he said that he had received were incorrect?

A. Well, I would attempt that if the conditions warranted that attempt at the particular time. There are other times when I possibly told Austin, "Well, the sales department advised me that the information you have is

correct and it has been verified by our own offices, and inasmuch as you brought it to our attention, go ahead and meet the price".

Q. But on the other occasions you have advised him that the information that he had that the price had been cut was incorrect?

A. Well, I wouldn't say that. I never said it was incorrect in any of those letters there. We hadn't been able to substantiate his reports, and feeling that the reports that he had from his field were not sufficient for us to go further down, a very unattractive price schedule which was probably published at that time, why we tried to bring him along, give him a little lockerroom talk.

1004 Q. But you at least attempted to convince him those reports were incorrect?

A. The exhibits I haven't read in detail. They will speak for themselves, Mr. MacIntyre. I don't know.

Q. I am asking you for your present recollection?

A. I can't tell. What are you referring to? Give me a specific case. This thing in the rigid conduit industry, if you please, comes up every five minutes, I might say every five seconds, until you have such a market such as you have right now. There has never been a time in the history of the industry that a price card has meant anything other than spending some printer's ink. Your investigations certainly should have revealed that.

Q. What do you say on that point as to the bids that you and your competitors submitted to the Federal government, Mr. McAuliffe?

Mr. Peyser: I object to the question, Your Honor, unless it is made definite as to time.

Trial Examiner Norwood: Make this bid definite. Describe the bid so he knows what you are talking about.

The Witness: We bid every day to the government.

Trial Examiner Norwood: Wait a minute. He is referring to a particular bid, I think.

By Mr. MacIntyre:

Q. Well, if the price cards to which you have just

1005 made reference, Mr. McAuliffe, do not mean anything at all, then how do you explain the bid that you and your Company and your competitors submitted to the Navy Department on May 12, 1936, as is shown by Commission's Exhibit 341?

A. I didn't make such a statement in the first place.

Trial Examiner Norwood: Don't answer, please.

Mr. Stewart: Just a moment. I object on the ground that the question is argumentative.

Mr. Poskanzer: May I see the exhibit before the question is answered, please?

Trial Examiner Norwood: What did counsel say?

Mr. Poskanzer: May I see that before the question is answered?

(Document handed to counsel.)

Trial Examiner Norwood: Read the question.

(The question was read.)

Trial Examiner Norwood: The objection is overruled.

Mr. Poskanzer: I wish to object, Your Honor, upon the ground that the question is improper in form and assumes a fact not proven. The question asks this witness about him and his competitors. Now, Cohoes is a competitor and we are not on this list, so the question is absolutely improper because his competitors are not included in this list of bidders.

Trial Examiner Norwood: Do you object because 1006 all of his competitors were not in that bidding?

Mr. Poskanzer: Yes, the question assumes all the competitors. Change that to some of them and I will accept the question.

Trial Examiner Norwood: You believe in contrary implication of particulars, then? The objection is overruled. Answer the question.

The Witness: I didn't make such a statement.

By Mr. MacIntyre:

Q. Mr. McAuliffe, you have just made reference to what your price cards mean and what they do not mean. Now, will you please explain that last statement that you made about your price cards? Let us know what you meant.

A. Well, as I stated, the rigid conduit industry has probably been the most ignorantly handled from a standpoint of so-called merchandising of anything that I have ever been identified with. The law of supply and demand has always governed the activities and what has gone on in the industry. I daresay that in my fifteen years identified with it there have been not more than three periods at which a price card really represented the price. The prices were always cut anywhere from one-five to five-fives

from the so-called price card. What those three periods are, whether it was five or three over a period of fifteen years, I can't tell you, but there have been times
1007 such as the present time when the acute shortage in raw material and finished material, where today as it so happens I assume I haven't even seen our competitors' price card since my business as President of the Company has been to keep wheels turning; I assume in view of Mr. Henderson having—what do you call it, put a ceiling on the price—that all our producers are at least getting what the highest published card is. I know if we are not I am going to raise the mischief with my salesmen.

Q. Is it your understanding—

A. (Interrupting): That is the condition at that particular time. Possibly several other instances during the past fifteen years of where a similar situation has existed.

Q. Is it your understanding at the least, Mr. McAuliffe, that Mr. Henderson has fixed a price ceiling on rigid steel conduit in its finished form?

A. Well, that is what they tell me.

Q. Who tells you?

A. The sales department.

Q. You don't know anything except what they have told you?

A. Only I have read the order.

Q. And it is your understanding and belief from the order issued that it covers rigid steel conduit in finished form; is that correct?

A. That is my understanding.

1008 Q. Now, as to your bid which was submitted to the Navy Department on May 12, 1936, as is evidenced by Commission's Exhibit 341, would you say that that bid was submitted during one of these periods when prices were being adhered to as announced on the price sheets of your Company?

A. Ordinarily, Mr. MacIntyre, a bid from the government entails anywhere from five to twenty-five carloads of conduit. Here is a little jerkwater bid amounting to probably a thousand feet of a particular size. In this list of possibly 25 names, 20 of them are probably so-called wholesalers. Now, they have our published sheet. The order is so insignificant, because Triangle Conduit Company probably only quoted on this because of the fact

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that if you don't quote continuously to the Navy Department, regardless of how insignificant, you would be removed from the list, so Triangle quoted its published prices. I can't identify the individual wholesalers as to whether they were Triangle or not, or whether they bid on Triangle merchandise.

Mr. MacIntyre: Will you please read the question to Mr. McAuliffe, the pending question.

(Pending question read.)

Mr. King: I think that has been very adequately answered.

Mr. Stewart: Pardon me a minute; what is the 1009 date of that bid?

Mr. MacIntyre: May 12, 1936.

Trial Examiner Norwood: Now the witness goes into a long explanation there without answering the question. If you will just answer these questions, then if there is any explanation necessary, your counsel will give you an opportunity to do that on cross-examination and we will get along faster if you will simply answer the question directly.

Read the question, and answer the question.

(The question was read.)

Trial Examiner Norwood: That question goes to time.

The Witness: Well, I couldn't answer that.

By Mr. MacIntyre:

Q. In other words, these three periods that you have been telling us about, you don't know when they began, when they ended or how long they lasted?

A. That was a general statement, Mr. MacIntyre.

Q. Yes, but I am now asking you another question. Can you tell us?

A. I couldn't define them. I don't know whether it was three or five. I believe I answered three or five. It might have been seven or eight.

Q. But you don't know when either one of them began?

1010 A. I know there is one going on right now.

Q. Except for the one now in progress, you can't tell us when either one of the others began?

A. Not without analyzing our office records and so on.

Q. Or when either one of them ended? What is your answer to that?

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A. I can't give you that information.
Q. Or how long either one of them lasted?
A. I can't give you that information.
Mr. MacIntyre: If Your Honor please, that is all for this witness.

1014 *Redirect Examination by Mr. MacIntyre.*

Q. Mr. McAuliffe, I am showing you Commission's Exhibit 50-B, which is the second page of this first contract, and in that appears the name Central Tube Company and Youngstown Sheet & Tube Company. You, as president of the Triangle Company, have knowledge that you have been a member, and your company has been a member of an association of which those companies were also
1015 members; is that correct?
Mr. Stewart: Now, wait a minute. I object to that for the reason that is not the proper way to prove that fact.
Trial Examiner Norwood: Well, if this witness,—of course, that is new material he is bringing out, but if it is valuable, I will let him do it, and you may cross-examine him further on it.
Mr. Peyser: If your Honor please, I further object. It is not proper redirect.
Trial Examiner Norwood: Oh, well, I think he may do that if it appears that this is information that we can use. The objection is overruled.
Answer the question.
The Witness: What is the question?
Mr. MacIntyre: Please read the question.
Trial Examiner Norwood: Read the question.
(Question read.)
The Witness: Do you mean in 1926?
Mr. MacIntyre: At any time since the date of that contract?
The Witness: Yes, we have been members of an association with these companies, but not in 1926, or not while this contract existed.
Mr. MacIntyre: That is all.
1016 Trial Examiner Norwood: Do you want to ask him anything?
Mr. Stewart: No.
Trial Examiner Norwood: Thank you, Mr. McAuliffe.

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The Witness: Am I on my way now?

Trial Examiner Norwood: The witness is discharged.

(Witness excused.)

Trial Examiner Norwood: Call your next witness.

Mr. MacIntyre: I have no witness before noon, if your Honor please, so I would, under those circumstances, ask for an early reconvening this afternoon.

(Whereupon at 12:15 P. M. a recess was taken to 1:30 P. M.)

1017 Afternoon Session.

1:30 P. M.

Trial Examiner Norwood: The hearing will come to order.

Proceed.

Mr. MacIntyre: If Your Honor please, I would like for the record to show that I this noon received a communication from James A. Byrne, attorney for Clifton Conduit Company, and those persons named in the complaint as composing it, the partnership, in which Mr. Byrne states that since talking to me on the telephone this morning he has been informed that Mr. Hathaway, upon whom a subpoena was served yesterday by leaving the same at his place of business, 75 Montgomery Street, Jersey City, is away until the forepart of next week.

Mr. Hathaway was subpoenaed for appearance here tomorrow morning at ten o'clock.

I would like to make this observation for the record, for a matter of information of Mr. Hathaway and anyone else whom it may concern, that failing Mr. Hathaway's appearance tomorrow, if he should not, as Mr. Byrne has indicated, appear I shall report to the Commission that he was served duly in accordance with the provision of the Commission's Act, which provides that due service is the leaving of a subpoena at his principal place of business.

1018 In that connection, I also call to the attention of Mr. Hathaway or anyone else whom it may concern, the first paragraph of Section 10 of the Federal Trade Commission Act.

Trial Examiner Norwood: Call your witness.

Mr. MacIntyre: I wish to call as the next witness at the instance of the Commission Mr. T. H. Bibber.

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T. H. BIBBER was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

Q. Mr. Bibber, give us your name, please.

A. T. H. Bibber.

Q. Mr. Bibber, what is your business and occupation?

A. I am employed by the Triangle Conduit & Cable Company in the promotional department.

Q. What are your duties in your employment in that department?

A. Perhaps rather varied. It consists of ascertaining new construction work, notifying our branch offices of the same and following those jobs through in an endeavor to get the business. It also consists of mailing to branch offices information of various kinds, and also send-
1019 ing samples to them and also mailing out catalogues and price sheets in connection with such inquiries or requests as they may make.

Q. How long have you been engaged in that position with those duties?

A. Since December 16, 1935.

Q. You mentioned that your duties included the mailing out of price sheets and the like.

A. Right.

Q. Does that mean that you without solicitation mail to prospective customers of the Triangle Company price sheets, making quotations of prices to them?

A. It means the mailing of price sheets to our agents and distributors.

Q. Are they customers of the Triangle Company?

Mr. Stewart: I submit that that is already appearing in the record as to what their function is.

Trial Examiner Norwood: Well, he may answer the question.

The Witness: Will you repeat the question, please?

Mr. MacIntyre: Please read the question.

(The question was read.)

The Witness: Yes, sir.

By Mr. MacIntyre:

Q. How frequently do you send them price quotation sheets of the Triangle Company?

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1020 A. When they are given to me by the sales department for such distribution.

Q. Well, how frequently would you say that that is, or that that occurs?

A. I could not answer that deliberately because of the fact that it is not at regular intervals. It is when the sales department have a new price sheet for distribution, they give it to the promotion department and they see to sending them out.

1021 Q. Do you, in communicating with the customers of the Triangle Company in connection with your sending them such price sheets, compute for them in some instances delivered price quotations?

A. No, sir.

Q. You leave that to the explanation in the sheets, so that they may do so; is that correct?

A. That is a part of the duties of the sales department, and they take care of that, not me.

Q. When you send these sheets out, do they have you to enclose in the mail with which you send the sheets, any enclosures of statements about delivered price quotations computed by them?

A. I do not understand the question.

Mr. MacIntyre: Please read the question.

Trial Examiner Norwood: Read the question.

(Question read.)

By Mr. MacIntyre:

Q. Computed by your sales department?

A. What I send out, Mr. MacIntyre, are what sheets are given me by the sales department for that purpose.

Q. Well, can you tell us whether or not in some instances they also give you completely computed delivered price quotations, in addition to the sheets of the Tri-
1022 angle Company which are already in evidence here?

A. I do not think I can answer that question.

Trial Examiner Norwood: Do they ever give you anything of that nature, prices already figured out?

The Witness: The sheets are made up and printed, and they are in our files, and when they are to be sent out, I send down an order for them to be mailed, and as to their general make-up, I am not a great deal familiar with that. I have nothing to do with the direct sales.

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Trial Examiner Norwood: You don't examine them before you send them out?

The Witness: No, sir. That is done by the sales department.

By Mr. MacIntyre:

Q. What other duties, in addition to those you have enumerated, do you carry on for the Triangle Company?

A. That about covers my duties; now and then a piece of advertising.

Q. Now, you told us that you started on those duties December 16, 1935. What did you do prior to that?

A. Prior to that, I was at liberty for several months, and prior to that time I was with NRA, the National
1023 Electrical Manufacturers Association, who were administrators of NRA for the industry.

Q. Did you work for the NRA in Washington?

A. No, sir.

Q. Did you work for the National Recovery Administration as its employee in New York?

Mr. Stewart: I object. He is asking the witness for a conclusion as to his status. Let him tell what he did. It is not for the witness to decide who he worked for.

Trial Examiner Norwood: I think he is asking for factual matter here.

Mr. Stewart: Well, let him ask that.

Trial Examiner Norwood: The objection is overruled.

Whom were you working for, the Government or for whom?

The Witness: For the National Electrical Manufacturers Association.

By Mr. MacIntyre:

Q. Well, please read the question to the witness.

(Question read as follows: "Did you work for the National Recovery Administration as its employee in New York?")

A. No.

Q. Well, now, how long did you work for the
1024 National Electrical Manufacturers Association in New York?

A. From September, 1934, until April 29, 1935, I think that was when the—

Q. What was the nature of your duties during the course of your employment?

A. I was secretary to the supervisory agency, Mr. Frank C. Hodkinson, of the Roughing-In Materials Division of the electrical industry.

Q. Was he also in the National Electrical Manufacturers Association?

A. Was he employed by them, do you mean?

Q. Yes.

A. Well, that was an appointive position by the president, on the recommendation, I believe, of the Association.

Q. How do you know?

A. I do not know.

Q. I did not understand.

A. I do not know. That is my conclusion.

Mr. MacIntyre: Well, if your Honor please, then I ask that the last answer of the witness about the manner in which Mr. Hodkinson was appointed, be stricken. He stated that he does not know.

Mr. Stewart: I object to the motion of counsel. The answer was in response to his question. He got what
1025 he wanted. He does not like it. I say it should stay in the record.

Mr. MacIntyre: I say the witness has developed, though, on further questioning, that he did not know he was giving in the way of an answer.

Trial Examiner Norwood: Read the question and the answer which it is proposed that I strike.

(Question and answer read as follows:

"Q. Was he also in the National Electrical Manufacturers Association?

"A. Was he employed by them, do you mean?

"Q. Yes.

"A. Well, that was an appointive position by the president on the recommendation, I believe, of the Association.")

Mr. MacIntyre: I move that the witness' answer be stricken because upon further questioning it shows—

Trial Examiner Norwood: The motion is allowed.

Mr. Stewart: Exception.

1026 By Mr. MacIntyre:

Q. What was the nature of your duties in your position, that is, at the time you worked for the National Electrical Manufacturers Association, as you have told us, during that period of time?

A. It was my duty to, under the direction of Mr. Hod-

kinson, to see to it that manufacturers filed prices at which they sold goods, and those prices were filed and were immediately distributed by the mailing department of the National Electrical Manufacturers Association to all of the people in that particular branch of the industry, and they in turn filed prices. It was my business to see that those were sent out and that the proper sheets were taken care of.

Q. Did those activities cover rigid steel conduit manufacturers?

A. They did.

Q. Can you name those manufacturers who were so covered by those activities, that is, rigid steel conduit manufacturers?

A. I couldn't give you a full list of them, Mr. MacIntyre.

Q. Was Cohoes Rolling Mill Company one?

Mr. Stewart: I object. The witness has said he can't give a full list. I submit that he should not be led.

Trial Examiner Norwood: I think he can probe his memory on that. The objection is overruled. Was 1027 Cohoes one of them?

The Witness: As I remember—it is some time ago, Mr. MacIntyre—as I remember it, they were.

By Mr. MacIntyre:

Q. What about Clayton Mark & Company?

A. I think they were.

Q. What about Central Tube Company?

A. They were.

Q. What about Fretz-Moon Tube Company?

A. Fretz-Moon? I am not so sure about them, but I think so.

Q. What about the General Electric Company?

A. They were.

Q. Enameled Metals Company?

A. Yes.

Q. Garland Manufacturing Company?

A. Yes.

Q. Laclede Tube Company?

A. Yes.

Q. National Electric Products Corporation?

A. Yes.

Q. Steelduct Company?

A. Yes.

Q. Triangle Conduit & Cable Company?

A. Yes.

1028 Q. Walker Brothers?

A. Yes.

Q. Youngstown Sheet & Tube Company?

A. Yes.

Q. Steel & Tubes, Inc.?

A. Yes.

Q. The M. B. Austin Company?

A. Yes.

Q. Clifton Conduit Company?

A. I think so.

Q. I am showing you Commission's Exhibit 57-A. Would you say that the price sheets which were filed with you and which were distributed by the companies and to the companies that you have just named, or I have named to you in questions and to which you have answered, included such sheets as the one I am now handing you?

A. I would say so.

Q. Isn't it also true, Mr. Bibber, that included in such filings of price information were booklets of delivery charges, such as the one I am handing you marked for identification as Commission's Exhibit 89?

A. No, sir.

Mr. Stewart: Just a moment. Do you attach any significance to the word "filing"? The man said he gets these and sends them out. Do you attach any significance

1029 to "filing"?

Trial Examiner Norwood: The witness testified as to the practices being followed.

Mr. Stewart: Are you talking about filing under NRA?

Mr. MacIntyre: I understood my question to go to the period of time that this man was with the National Electrical Manufacturers Association.

Mr. Stewart: All right. I thought you were talking about the Company.

Mr. MacIntyre: What was the last question, Mr. Reporter?

(The question was read.)

By Mr. MacIntyre:

Q. Are you positive, Mr. Bibber, that no such booklets as the one marked as Commission's Exhibit 89 were ever filed with you and distributed by you in that connection?

A. Not in NEMA, no, sir.

1030 Trial Examiner Norwood: He asked you if you are positive that this book was not filed. You answered not that you remember. That doesn't quite cover the question.

The Witness: Mr. Commissioner, this booklet which Mr. MacIntyre shows me, did not come to our department, did not come to me, and therefore I say it wasn't filed with me.

By Mr. MacIntyre:

Q. Think right hard at this time, and see if you can recall you and Mr. George B. Cummings of the National Electrical Manufacturers Association having submitted to me that very booklet that I am handing you as part of the filing by the Youngstown Sheet & Tube Company during that time that we have just covered, and calling in that connection to your attention, for your reference, for the purpose of refreshing your memory and your recollection, if it is possible, the receipt stamp of the supervisory agency appearing in the upper right-hand corner of the outer cover of that booklet.

A. Mr. MacIntyre, it was explained to you by Mr. Frank Hodkinson and myself that there were materials that came into NEMA for distribution, and some of them were distributed by the distributing department and did not come to us for copy filing in our files, and this is one of

1031 them.

Q. That is, distribution of this type of booklet was made through the distributing rooms of NEMA rather than directly to your office?

A. All of them were.

Q. But they were submitted at the time of the price filings or the price sheets were submitted to your office?

A. No, sir, not that one. I have no recollection of that book ever being in our files at all.

Q. That is, in your files as secretary to Mr. Hodkinson?

A. As secretary to Mr. Hodkinson, correct.

Q. Rake your memory, Mr. Bibber—

Mr. Stewart: I submit, Mr. Examiner, that there has been sufficient probing of the witness' memory. He says three or four different ways that he doesn't remember. It is evident that what Mr. MacIntyre wants to do, is to force him into something that he is unwilling to admit, and I submit that is not fair.

Trial Examiner Norwood: I don't take it to mean that. Read the beginning of that question.

(Question read.)

Trial Examiner Norwood: Finish your question, Mr. MacIntyre.

1032 By Mr. MacIntyre:

Q. That is, for the purpose of determining whether or not you can recall that during the course of an interview that I had with you and Mr. George B. Cummings at the offices of the National Electrical Manufacturers Association during April, 1935, that you and he submitted to me this booklet, with the statement that it had been filed with you, as a part of the price filings of the Youngstown Sheet & Tube Company.

A. I don't recall that at all, and I don't recall this book having been brought forward at that time.

Q. You just have no recollection of it?

A. I want to assist the government in this thing as much as possible, but I am not going to tell you something that I don't remember.

Q. You say now that you do not recall anything about that?

A. I don't recall that book at all, Mr. MacInfyre. Price sheets, yes.

Mr. MacIntyre: Will counsel for the Youngstown Sheet & Tube Company concede that in the price filing of the Youngstown Sheet & Tube Company, which it made to the National Electrical Manufacturers Association during the winter of 1934-1935, it filed such booklets, in fact, the booklet, Commission's Exhibit 89?

1033 Mr. Gilpatric: We have no knowledge of that, Mr. MacIntyre. We can't make that concession, based on what we have been told by our clients.

Mr. MacIntyre: Will you make further inquiry for the purpose of determining whether it would be possible at all for you to make such concessions before the next meeting next week, that is, the first meeting of the hearings of next week?

1034 Mr. Gilpatric: Well, we will write to the Youngstown people and ask them, but whether they have any record which will show at this date, I don't know. I think it has been explained to you about the Youngstown system of keeping files. I can't make any guarantee. I will endeavor to answer your question in good faith.

Mr. MacIntyre: I am anxious to avoid calling just as many witnesses as I can, and try to make it so that we can call just as few as possible in this case.

By Mr. MacIntyre:

Q. Mr. Bibber, do you know anything at all about the use of freight rate schedules and delivery charge books by the Triangle Company in its calculation of delivered price quotations?

A. No, sir, that is a part of the sales department. I have nothing to do with them.

Q. Well, even though it be a part of the activities of the sales department of the Triangle Company, is it your testimony now that you have never had any contact with that part of the work of the Triangle Company?

A. None at all.

1035 Mr. MacIntyre: Read that question.

Trial Examiner Norwood: Read the question.

(The question was read.)

Trial Examiner Norwood: You answered with respect to the present time, I think.

The Witness: Right.

Trial Examiner Norwood: He asked you if you have ever come in contact with it. Have you?

Mr. Stewart: What do you mean by "contact"?

The Witness: I don't understand the question. What I am trying to find out is what Mr. MacIntyre is asking me. Will you tell me that?

By Mr. MacIntyre:

Q. I am asking you if even though it isn't a part of your duties at the Triangle Company, whether or not you are acquainted with their method of figuring delivered price quotations?

A. No, sir.

Q. Did you ever see anyone doing that work there?

A. Not to my recollection.

Q. Did one of the officials of the Company ever talk to you about the work that they had done in that direction?

A. No, sir.

Q. You never heard it mentioned around the offices of the Triangle Company; is that correct?

1036 A. That is correct.

Q. Now, in sending these price sheets out for the

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Triangle Company, have you included with those freight rate schedules and delivery charge booklets, that is in sending the same to the customers of the Company?

A. I send an order down to the mail department to send out price sheets so and so, and that means so far as I am concerned the price sheets. Now, unless the sales department would give an order and that would include any other matter it wanted to go with that particular mailing, it wouldn't come to me.

Trial Examiner Norwood: He asked you with respect to your own experience.

The Witness: My own experience is no.

By Mr. MacIntyre:

Q. You never included with the price sheet, in sending it to the customers of the Triangle Company, any of Triangle's freight rate schedules and delivery charge booklets?

A. I never did, no.

Q. Did you know of anyone else at the Triangle Company ever doing so?

A. I wouldn't know that.

Q. I am asking you if you did know of anyone else having done so?

Mr. Stewart: He says he wouldn't know that.

1037 Mr. Robison: Now he wants him to say he doesn't know.

Trial Examiner Norwood: Do you know or don't you know?

The Witness: I don't know.

By Mr. MacIntyre:

Q. Will you again give us the date on which you left the employ of the National Electrical Manufacturers Association?

A. If my memory is any good, it was the 29th of April when the NRA was declared null and void. That is when I left them.

Q. Well, maybe we can fix the day that way. You say you left there at the time the NRA was declared unlawful?

A. Right.

Mr. Stewart: Have you settled on that date, yet?

Mr. MacIntyre: I think the Commission can take judicial notice of the fact that that was the 27th day of May, 1935.

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Mr. King: I think the Commission can also take judicial notice of the filings in the archives concerned in this matter too, sir, under the Act.

1038 Trial Examiner Norwood: On the record.

Mr. MacIntyre: I have nothing further from Mr. Bibber this afternoon.

Trial Examiner Norwood: Cross-examine him.

1040 Mr. MacIntyre: I have an additional matter that I can take up before adjournment today. I have an offer which I want to make this afternoon.

I offer into evidence at this time the freight rate bulletins, supplements thereto and the freight rate schedules and supplements thereto of the Triangle Conduit & Cable Company as submitted here by Mr. Peyser: Commission's Exhibits 75-B, 75-C, 75-D, 75-E, 75-F, 75-H, 75-I to U, inclusive, and 75-V to Z-53, inclusive.

Mr. MacIntyre: I will say that those missing numbers for the most part are delivery charge booklets which have been taken care of by concession.

1041 Mr. Robison: There is no objection on our part.

Trial Examiner Norwood: The exhibits are received as marked.

COMMISSION'S EXHIBITS NOS. 75-B, 75-C, 75-D, 75-E, 75-F, 75-H, and 75-I to 75-U, inclusive, and 75-V to 75 Z 53, inclusive, were offered and received in evidence.

Trial Examiner Norwood: Proceed, Mr. MacIntyre.

Mr. MacIntyre: If your Honor please, I have here a booklet to which I wish the number given as Commission's Exhibit 77-A. This number was reserved, and I have another booklet which I am not ready to have marked at this time, which will be known as Commission's Exhibit 77-B.

Trial Examiner Norwood: Let the booklet be marked as Commission's Exhibit 77-A for identification.

(The document referred to was marked "Commission's Exhibit 77-A" for identification.)

Trial Examiner Norwood: Proceed, Mr. MacIntyre.

Mr. MacIntyre: If your Honor please, I make reference to Commission's Exhibit, for identification, 77-A, delivery charge booklet on Laclede conduit of the

1042 Laclede Steel Company, which was sent to me under date of September 24, 1941, as a delivery charge booklet of that company, by its attorney, Milton Tucker, attor-

ney here for the Laclede Steel Company and Laclede Tube Company.

I will ask counsel if they have any objections as to its identification as such.

Mr. Robison: May I look at it?

Mr. MacIntyre: Yes.

(Mr. Robison examined the exhibit referred to.)

Mr. MacIntyre: If your Honor please, may we go off the record a minute?

Mr. Robison: We raise no such question on our part.

Mr. MacIntyre: There is no objection by counsel for Respondents as to this booklet being what it purports to be.

Mr. Stewart: On the basis of your statement.

Mr. MacIntyre: I then offer it into the record as Commission's Exhibit 77-A.

Trial Examiner Norwood: Is there any objection?

1043 Mr. Stewart: None at all.

Trial Examiner Norwood: The exhibit is received as marked.

COMMISSION'S EXHIBIT NO. 77-A was offered and received in evidence.

Trial Examiner Norwood: Is there anything further?

Mr. MacIntyre: I do not believe I have anything else this afternoon.

Trial Examiner Norwood: We will recess until 10 o'clock tomorrow morning, Eastern Standard Time.

(Whereupon, at 2:25 P. M. September 30, 1941, the hearing in the above-entitled matter was adjourned.)

1046 PROCEEDINGS.

Trial Examiner Norwood: Are you ready to go ahead. The hearing will come to order. Pursuant to adjournment on yesterday, the hearing in Docket 4452 is now convened at 10 o'clock a. m. October 1, 1941, in Parlor C, 22nd Floor, Hotel Abbey, New York, New York.

1047 FRANZ NEILSON, was thereupon called as a witness for the Commission, and having been first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

Q. Mr. Neilson, will you state for the record the nature of your business and occupation?

A. I am an attorney-at-law.

Q. Where?

A. At 150 Broadway, New York City.

Q. How long have you been engaged there in that capacity?

A. Thirty-seven years.

Q. Have you, during the course of such engagement, served in any capacity in any position with the National Electrical Manufacturers Association, or any sections thereof?

A. Yes.

Q. Please tell us about that, that is, as to the time and the nature of the duties?

A. In 1932, from January, 1932, to January, 1933, I was employed as secretary to the Trade Expansion Committee of the Rigid Conduit Section of NEMA. My
1048 duties were to assist that committee in the obvious purposes for which it was formed, namely, the promotion of business, the advancement of the art in the development and improvement of their products, the assembling and dissemination to the members of statistics indicating the progress of their business from the standpoint of volume of sales.

We watched hostile municipal ordinance legislation, and we observed closely the progress of any other competitors' commodities.

Q. In that connection, did you attend meetings of members of this section?

A. Yes.

Q. Were records made of activities that occurred at those meetings?

A. Yes.

Q. Who made those records, Mr. Neilson?

A. My recollection is that I did, serving as secretary of the meetings.

Q. That was a part of your regular duties at that time?

A. Yes.

Q. Mr. Neilson, I show you Commission's Exhibits, for identification, 692 Z 141-143, inclusive, and ask you to state if you recognize that document, and if so, as what?

1049 A. I recognize that as minutes of that meeting of that date.

By Mr. MacIntyre:

Q. And that is your signature at the end of the minutes?

A. Yes.

Mr. MacIntyre: Thank you.

Mr. King: Did you give the date?

Mr. MacIntyre: January 27, 1932.

By Mr. MacIntyre:

Q. Mr. Neilson, I now show you Commission's Exhibits, for identification 6 92 Z 146 to Z 147, purporting to be minutes of the Rigid Conduit Section of the National Electrical Manufacturers Association, February 18, 1932, and ask you to state whether you recognize those, and if so, as what?

A. I recognize those as the minutes of a meeting held that date.

Q. Is that your signature at the end of the minutes?

A. Yes.

1050 Q. Mr. Neilson, I now show you Commission's Exhibits, for identification, 692 Z 149 to Z 151, inclusive, purporting to be the minutes of the Rigid Conduit Section of National Electrical Manufacturers Association, March 3, 1932, and I ask you to state if you recognize that as a document, and if so, as what?

A. I recognize that document as such minutes.

Q. Is that your signature at the end of the document?

A. Yes.

Q. Mr. Neilson, I now show you a document marked for identification Commission's Exhibit 692 Z 153 to Z 156, inclusive, purporting to be the minutes of a meeting of the Rigid Conduit Section of the National Electrical Manufacturers Association, Thursday, March 24, 1932.

I ask you to state if you recognize that document, and if so, as what?

A. I recognize it as the minutes of that meeting.

Q. Is that your signature at the end of the document?

A. Yes.

Q. Mr. Neilson, I now show you document marked for identification as Commission's Exhibit 692 Z 158 to Z 161, inclusive, and purporting to be the minutes of a meeting of the Rigid Conduit Section, National Electrical Manufacturers Association, April 24, 1932, and ask you to state if you recognize that document, and if so, as what?

1051 A. I recognize it as minutes of such meeting.

Q. Is that your signature at the end of the document?

A. Yes.

Q. Mr. Neilson, I now show you document marked for identification as Commission's Exhibit 692 Z 163 to Z 165, purporting to be the minutes of a meeting of the Trade Expansion Committee, Rigid Conduit Section, National Electrical Manufacturers Association, April 7, 1932.

I ask you to state whether you recognize that document, and if so, as what?

A. I recognize it as such minutes.

Q. Is that your signature at the end of the document?

A. Yes.

Q. I now show you document marked for identification as Commission's Exhibit 692 Z 166 and Z 167, purporting to be the minutes of a meeting of the Rigid Conduit Section, National Electrical Manufacturers Association, May 19, 1932, and May 20, 1932, and I ask you to state whether you recognize that document, and if so, as what?

A. I recognize it as such minutes.

Q. Is that your signature at the end of the document?

A. Yes.

Q. I now show you, Mr. Neilson, document marked

1052 for identification as Commission's Exhibits 692 Z 169 to Z 173, inclusive, purporting to be minutes of a

meeting of the Rigid Conduit Section, National Electrical Manufacturers Association, June 22, 1932.

I ask you to state if you recognize that document, and if so, as what?

A. I recognize it as such minutes.

Q. Is that your signature at the end of the document?

A. Yes.

Q. I now show you document marked for identification as Commission's Exhibit 692 Z 176 purporting to be the minutes of the Trade Expansion Committee, Rigid Conduit Section, National Electrical Manufacturers Association, May 17, 1932, and ask you to state if you recognize that document, and if so, as what?

A. I recognize it as such minutes.

Q. Is that your signature at the bottom of the page?

A. Yes.

Q. I now show you document marked for identification Commission's Exhibits 692 Z 177 and Z 178, purporting to be the minutes of the Trade Expansion Committee, Rigid Conduit Section, National Electrical Manufacturers Association, June 22, 1932, and I ask you to state whether you recognize that document, and if so, as what?

A. I recognize it as such minutes.

1053 Q. Is that your signature at the end of the document?

Q. I now show you document marked for identification as Commission's Exhibits 692 Z 180 to Z 183, inclusive. They purport to be the minutes of the Rigid Conduit Section, National Electrical Association, July 21, 1932.

I ask you to state if you recognize that document, and if so, as what?

1054 The Witness: I recognize it as minutes of such meetings.

By Mr. MacIntyre:

Q. Is that your signature at the end of the document?

A. It is.

Q. Now, Mr. Neilson, I show you documents marked for identification as Commission's Exhibits 692-Z-184 purporting to be the minutes of the Rigid Conduit Section of the National Electrical Manufacturers Association, August 18, 1932; 692-Z-186 to Z-187, inclusive, purporting to be the minutes of the Trade Extension Committee of that Section, of July 21, 1932; 692-Z-189 to Z-193, inclusive, purporting

to be the minutes of the meeting of September 23, 1932, of the Rigid Conduit Section of the National Electrical Manufacturers Association; 692-Z-194 and Z-195 purporting to be the minutes of the Rigid Conduit Section of the National Electrical Manufacturers Association of October 6, 1932; 692-Z-201 and Z-202, purporting to be the minutes of the Rigid Conduit Section of the National Electrical Manufacturers Association of October 20, 1932; 692-Z-210 to Z-213, inclusive, purporting to be the minutes of the Rigid Conduit Section of the National Electrical Manufacturers Association of September 1, 1932; 692-Z-218 and Z-219, purporting to be the minutes of the Trade Extension Committee of the Rigid Conduit Section of the Na-
1055 tional Electrical Manufacturers Association of October 20, 1932; 692-Z-220, purporting to be the minutes of the Trade Extension Committee of the Rigid Conduit Section of the National Electrical Manufacturers Association of November 3, 1932; 692-Z-221 and Z-222, purporting to be the minutes of the Rigid Conduit Section of National Electrical Manufacturers Association of December 15, 1932;—

By Mr. MacIntyre:

Q. 692-Z-223 and Z-224, purporting to be the minutes of the meeting of the Trade Extension Committee of the Rigid Conduit Section of the National Electrical Manufacturers Association of December 1, 1932; 692-Z-225 and Z-226, purporting to be the minutes of the Rigid Conduit Section of the National Electrical Manufacturers Association of January 18, 1933; 692-Z-229 and Z-230, purporting to be the minutes of the Trade Extension Committee of the Rigid Conduit Section of the National Electrical Manufacturers Association meeting of December 15, 1932; 692-Z-239 to Z-241, inclusive, purporting to be the minutes of the Rigid Conduit Section of the National Electrical Manufacturers Association of February 16, 1933.

1056 I will ask you to state if you recognize those, and if so as what?

A. I recognize those as minutes of such meetings.

Q. And are those signatures at the end of each of those documents your signatures?

A. Yes.

Mr. MacIntyre: That is all.

Mr. Stewart: Well, I assume before you excuse Mr.

Nielson—I am sorry, I suggest we take a ten minute recess and give us an opportunity to look at them.

Trial Examiner Norwood: We will have a ten minute recess.

(Thereupon, a ten minute recess was taken.)

Trial Examiner Norwood: Gentlemen, let us come to order.

Proceed with the cross-examination.

Cross-Examination by Mr. Stewart.

Q. Mr. Nielson, directing your attention to Commission's Exhibit 692-Z-163, the reference in that minute to Louis Electric Corp., 15 Warren Street, New York, and the recital therein that a member submitted a price list issued by this Company, will you be good enough to tell us whether or not Louis Electric Corporation was a member of the Trade Extension group?

1057 A. He was not.

Q. Or the Section?

A. Or the Section, he was not a member of either.

Q. Now, I notice in several places in these minutes where there is an accompanying comment by Judge Neagle. I take it he was counsel for NEMA at that time?

A. He was.

Q. And were the minutes before they were finally approved submitted to him for his approval?

A. Yes.

Q. Would it be correct to say that you regarded Judge Neagle's comments or written communications as part of the minutes because you physically included them in this book?

A. I cannot say.

Q. Well, there is no doubt in your mind that the accompanying letters with the particular minutes containing the comments of Judge Neagle are authentic?

A. There is no doubt.

Mr. Stewart: That is all, thank you.

Trial Examiner Norwood: Is there any further cross-examination?

Is there any redirect?

Mr. MacIntyre: I have a question.

Trial Examiner Norwood: Go ahead.

1058 *Redirect Examination by Mr. MacIntyre.*

Q. Mr. Nielson, you have told Mr. Stewart that Louis Electric Corp. was not a member of either the Committee or the Section. The minutes which we have asked you about this morning will, as to the meetings which are covered by them in their showing of who were members in attendance properly show who were members, is that correct?

A. All members were not always in attendance.

Q. But those who are shown as members in attendance would be properly so shown in these minutes, is that correct?

A. That would be the intention. There could be mistakes.

Q. But to the best of your knowledge and belief, that is correct, is it?

A. I would say as a general matter, that is correct.

Mr. MacIntyre: That is all.

Mr. Stewart: That is all. Thank you.

Trial Examiner Norwood: Thank you, Mr. Nielson.

Recross-Examination by Mr. Stewart.

Q. Mr. Nielson, off the record you requested the privilege of seeing the minutes of April 7, 1932, Commis-
1059 sion's Exhibit 692-Z-163, and I ask you now to look at the minute and tell us what members were present?

A. Messrs. H. S. Walker, T. C. Gilpin, A. MacFadyan.

Mr. Stewart: That is all.

By Mr. Stewart:

Q. Who do they represent?

Redirect Examination by Mr. MacIntyre.

Q. Will you please state for the record, Mr. Nielson, who were they representing at that time, at that meeting?

A. They were personal members of the Trade Extension Committee; they constituted the Committee.

Q. And of what Companies did they come, that is, from what Companies did they come to that meeting?

A. From Walker Brothers, Triangle Conduit Company, and the Mohawk Tube Company, respectively.

Mr. MacIntyre: Thank you.

(Witness excused.)

Trial Examiner Norwood: Call your next witness.

Mr. MacIntyre: If Your Honor please, I now offer into evidence records of Respondents and as their admis-
1060 sion appearing in the following documents, the following minutes of meetings as shown on the face of Commission's Exhibits for identification 692-Z-141 to Z-143, inclusive, 692-Z-146 and Z-147, 692-Z-149 to Z-151, inclusive, 692-Z-153 to Z-156, inclusive, 692-Z-158 to Z-161, inclusive, 692-Z-163 to Z-165, inclusive, 692-Z-166 and Z-167, 692-Z-169 to Z-173, inclusive, 692-Z-176, 692-Z-177 and Z-178, 692-Z-180 to Z-183, inclusive, 692-Z-184, 692-Z-186 and Z-187, 692-Z-189 to Z-193, inclusive, 692-Z-194 and Z-195, 692-Z-201 and Z-202, 692-Z-210 to Z-213, inclusive, 692-Z-218 and Z-219, 692-Z-220, 692-Z-221 and Z-222, 692-Z-223 and Z-24, 692-Z-225 and Z-226, 692-Z-229 and Z-230, 692-Z-239 to Z-241, inclusive.

1061 Trial Examiner Norwood: Any objections to the proffer?

Mr. Stewart: May I ask—and I would like this on the record, whether I need to repeat the objections made to the former minutes of this period, that is, prior to 1934, I think it was, that I made the other day? Need I repeat it?

Trial Examiner Norwood: I think not.

Mr. Stewart: Well, with that understanding, I shall not repeat it, and with the understanding that the Examiner, at some later date, will examine the minutes, to determine which portions of them are, in his opinion, relevant and material, and will then notify counsel on both sides as to his ruling. I shall not make the objection at this time as to those portions which I deem to be irrelevant and immaterial, and I reserve the right to move to strike those out.

Trial Examiner Norwood: I will hear any other objections you may have first.

Mr. Gilpatric: Without, in any way, questioning the authenticity of these documents as minutes, we object to them as not competent evidence to show either who was present at the meetings reported in the minutes, or what happened at these meetings.

We also object to them, on the ground as not admissions

of, admissions by or records of any of the Respond-
1062 ents, or anyone except the person who wrote the minutes.

Mr. King: In addition to the objections heretofore made, I object to all of these minutes, on the ground that they show on their face that Clayton Mark & Company was not a member of the Section or the Committee.

Trial Examiner Norwood: Any further objections?

Mr. Welch: I understand we have a standing objection, subject to connection. I would have that objection, but I am not making it now, because we have a standing objection to that.

Trial Examiner Norwood: Counsel have repeated that out of abundance of precaution.

Mr. King: I call your Honor's attention to the fact that my understanding of the standing objection is that it is objected to on the ground that particular parties were not members at that time, but that doesn't go to the fact that the minutes show on their face that you weren't a member. That is why I repeated it, not on the ground of abundance of precaution, as I understand it.

Trial Examiner Norwood: I was not referring to the counsel, I was referring to the other cases. I will
1063 state this: as far as I have been able to examine these minutes, and the others which we received the other day, they all contain relevant, material matter. Until I study this case further, until I study those minutes further, I cannot determine whether or not there are portions which should be eliminated under the rule, and in making this ruling, I promise counsel that at some future time, when we have all studied them, I will entertain motions to strike portions of these exhibits, and with that understanding, I am overruling all the objections and receiving exhibits as marked and specified by counsel.

COMMISSION'S EXHIBITS NOS. 692Z 141 to 143, inclusive; 692 Z 146 and 147, 692 Z 149 to 151, inclusive; 692 Z 153 to 156, inclusive; 692 Z 158 to 161, inclusive; 692 Z 163 to 165, inclusive; 692 Z 166 and 167; 692 Z 169 to 173, inclusive; 692 Z 176; 692 Z 177 and 178; 692 Z 180 to 183, inclusive; 692 Z 184; 692 Z 186 and 187, 692 Z 189 to 193, inclusive; 692 Z 194 and 195; 692 Z 201 and 202; 692 Z 210 to 213, inclusive; 692 Z 218 and 219; 692 Z 220; 692 Z 221 and 222; 692 Z 223 and 224; 692 Z 225 and 226; 692 Z 229 and 230; 692 Z 239 to 241, inclusive, was offered and received in evidence.

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1064 Mr. MacIntyre: If your Honor please, I want the privilege of substituting for these originals photostats of the same.

Mr. Stewart: Agreeable.

Mr. MacIntyre: Is that agreeable to counsel for the Respondents?

Mr. Stewart: Yes.

Mr. MacIntyre: I don't know that this is necessary, but I would like to make this observation, in the light of an objection that was stated. The objections have been overruled, but I believe it is informative, at least at this time.

I call attention to Commission's Exhibit 692 Z 184, which carries the statement on the face thereof, to the effect that an additional subscriber to the Trade Extension agreement was present at that meeting, E. L. Wyman of Clayton Mark & Company.

Mr. Stewart: That is for Mr. King's purpose.

Mr. King: And that is why I objected. The minutes show on their face that we were not a member of the Section or the Committee.

Mr. MacIntyre: A member of the committee that was present happened to be a Clayton Mark Company
1065 man.

Mr. King: Mr. MacIntyre, the minutes do not show that, sir, and I wish you would stop making incorrect statements as to what the minutes show.

Mr. MacIntyre: Well, we will stand by the minutes.

Mr. King: Exactly, that is what I would like.

Trial Examiner Norwood: I don't think that bears on this matter; any way, in either case, my ruling would be the same. Go ahead.

Mr. MacIntyre: Now, if your Honor please, I serve notice on the record to counsel for the Respondent, and particularly to counsel for those Respondents who are shown by these minutes which you have just received in evidence, to have been present at these meetings, and to have participated in the activities at these meetings, to produce for marking for identification as Commission's exhibits here, the Trade Extension agreement of these Respondents, as if shown by the face of those minutes, and to also produce, that they may be marked for identification, all of the additional minutes of the meetings of the Trade Extension Committee for the period of its existence which

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are not now included in the offer which has been today received in evidence.

Mr. Stewart: Well, on the record—

1066 Mr. MacIntyre: (Interrupting) That is the Trade Extension Committee of the Respondent which are shown by these minutes just received in evidence to have been in existence. I don't say that that is a trade extension committee of National Electrical Manufacturers Association, but the evidence shown is to the effect that the Respondents, Youngstown Sheet & Tube Company, and others in attendance at these meetings, had such a committee; that they had such meetings, and that minutes of such meetings were kept and that it revolved about a trade extension committee.

Now, I am asking that they produce the agreement and the other minutes of the meetings not now in evidence.

Mr. Houston: Mr. Examiner, I move to strike the statement of counsel as being argumentative. It is just cluttering up the record. If he wants to serve notice on us, that is one thing.

Trial Examiner Norwood: Motion denied.

Mr. MacIntyre: That is exactly what I have done.

1067 Mr. Stewart: I think the record should show in answer to that. Inasmuch as these minutes are new to all of us, they just haven't been brought to our attention, having been brought to our attention here within the last few days, speaking for myself—and I take it as to the others—probably we never heard of this before, and as to whether we have these documents that is quite another matter.

I, therefore, suggest that inasmuch as Mr. MacIntyre succeeded in getting the original documents from the files of NEMA that he get the trade extension agreements from the same files.

Mr. MacIntyre: I want to say that I am unable to get more than what I have already produced.

Mr. Stewart: Then I take it we don't have them either.

Trial Examiner Norwood: Well, be that as it may, we will take that up later. Proceed, Mr. MacIntyre.

Mr. MacIntyre: I also at this time, if your Honor please, call attention of the Respondents counsel to the request that I made on the record in Washington September 23 at pages 411 and 414 that counsel for certain of the respondents produce forms of consignment stock agree-

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ments as adopted and used by their companies, as well as certain specific job contract agreements, land purchase agreements.

We asked that those be produced if possible on
1068 the morning of September 29th at a hearing here in New York. We would like to have them at this time if they are available.

1069 Trial Examiner Norwood: We will come to order. Proceed.

Mr. Robison: In response to the request appearing on pages 411 to 414 of the record, which was referred to by Mr. MacIntyre just prior to the recent recess, the record taken at that time shows clearly that the request was for consigned stock agreement forms, and specific building contract forms, which were first put into effect in the period from December 31, 1936, to July 1, 1938.

I stated on the record at the time when the request was made that as to the consigned stock agreement form, there was no such form in the case of the Youngstown Sheet & Tube Company. As a result of further inquiry that I have made since the request was made by Mr. MacIntyre, I now state on the record that the same is true as to any form of specific building contract, that there was no such form, first, put into use by the Youngstown Sheet & Tube Company within the period referred to in the request.

As to the Respondents, Republic Steel Corporation, Fretz-Moon and Steel & Tubes Company, Inc., I now produce a set of papers bearing at the top the designation "Fretz-Moon," and at the bottom the name "Steel
1070 & Tubes, Inc., Cleveland, Ohio," which has been furnished to me in response to a request submitted by me to counsel for the three companies, Republic, Fretz-Moon and Steel & Tubes, Inc. It is one set of papers which I am informed constitute forms which were mailed to all wholesalers of Fretz-Moon Conduit on February 15, 1937, and they consist of a form of consigned stock agreement, a form designated consumers firm order for a specific building job requiring 40,000 pounds or over of Rigid Steel conduit, elbows, nipples, couplings; a form designated purchase contract for a specific building job, requiring from 20,000 pounds to 39,999 pounds of the same commodities, and a further form designated purchase contract for a specific building job requiring 40,000 pounds or over of the same commodities.

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Mr. MacIntyre: Are you submitting these, Mr. Robison, in response to the request that I made on the record at pages 411 to 414 for such forms from the Fretz-Moon Tube Company; are you submitting them in behalf of counsel for that company in response to that request?

Mr. Robison: I am submitting those papers which have been received by me as a result of requests that I made that any such papers of either Fretz-Moon or Steel & Tubes, Inc., or Republic Steel Corporation, be 1071 sent to me.

Now, I have received only the one set, and I think, Mr. Examiner, that the reasons that probably account for the absence of any further sets are these: first, that Steel & Tubes, Inc., is not a producer of Rigid conduit, but formerly was, when it was in existence sole sales agents for Fretz-Moon Company; and as to Republic Steel Corporation, too, that their pleadings indicate in this case that they were not in the conduit business within a period referred to in Mr. MacIntyre's request.

Mr. MacIntyre: Well, my question is, Mr. Robison, you are submitting these documents in response, that is, on behalf of attorneys for Republic Steel Corporation, Fretz-Moon and Steel & Tubes, in response to the request that I made on the record at pages 411-414.

Mr. Robison: That is correct, and I say, according to my best information, they are the only papers in existence which comply with that request.

Mr. MacIntyre: I ask that the documents be marked for identification as Commission's Exhibits 693, 694, 695 and 696.

(The documents referred to, were marked for identification, "Commission's Exhibits 693, 694, 695 and 696.")

Mr. MacIntyre: Were there any other documents 1072 to be submitted today in response to that request?

Mr. King: If your Honor please, so that the record may be clear, as far as Clayton Mark is concerned, as I understand, a notice to produce is to lay a foundation for secondary evidence.

Mr. MacIntyre has proved Clayton Mark did not adopt any consigned stock agreement form, so there could be no basis for any proof of any kind in that connection.

I think the record shows an investigator made a demand for contract forms to Clayton Mark, and those forms were produced, so there is no basis there for laying a foundation or notice to produce.

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Mr. MacIntyre: Were any other documents ready for production today, pursuant to that request made at pages 411 to 414 of the record?

If your Honor please, I now offer into evidence, Commission's Exhibits for identification, 693, 694, 695 and 696, as contract forms and as specific building job contract forms, and consigned stock agreement forms of the Fretz-Moon Tube Company, a Respondent here.

1074 COMMISSION'S EXHIBITS NOS. 693, 694, 695 and 696 were offered and received in evidence.

1076 (Whereupon, at 12:00 o'clock noon, October 1, 1941, the hearing in the above-entitled matter was adjourned.)

1079 PROCEEDINGS.

Trial Examiner Norwood: The hearing will come to order.

Pursuant to adjournment on yesterday the hearing in Docket 4452 is now reconvened at ten o'clock a. m., Eastern Standard Time, October 2, 1941, in Parlor C, Hotel Abbey, New York City.

Please note the appearances.

Proceed, Mr. MacIntyre.

Mr. MacIntyre: I will call as the next witness at the instance of the Commission Mr. Jacob.

MORRIS L. JACOB was thereupon called as a witness for the Commission, and having been first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

Q. Will you please state your name?

A. Morris L. Jacob.

Q. Mr. Jacob, will you please state for the record your business or occupation?

A. I am the General Manager of the Cohoes Rolling Mill Company.

Q. How long have you held that position?

A. Since January 1, 1940.

1080 Q. What did you do prior to that?

A. I was Assistant General Manager, since 1937.

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Q. What time in 1937?
A. I will say about in August.
Q. What did you do prior to that?
A. I was sales representative for the Company.
Q. For the same Company?
A. That is right.
Q. And for how long?
A. Oh, I would say for a period of seven years.
Q. Since about 1930?
A. Around through there, 1930, 1931.
Q. Would it be correct to say that since 1930 you have been connected with the sales department of that Company in one capacity or another?
A. Well, I would not exactly say that I was in the sales department as General Manager.
Q. What are your duties as General Manager?
A. General supervision of the Company's activities.
Q. Do you have anything to do with pricing policies?
A. In a general way, yes.
Q. Tell us what you have to do with the pricing policies as General Manager in a general way.
A. I would say that various prices we establish from time to time are reviewed by me before we issue any 1081 price cards.
Q. Did you have a similar duty when you were Assistant General Manager in August, 1937, to January 1, 1940?
A. No. I would not say that I had that duty to perform.
Q. Did you have some supervision over the sales department during that period of time?
A. In a limited way only.
Q. Well, in what way was that?
A. Well, my predecessor as General Manager actually laid down the policies and it was my duty to follow them out. In that way it was limited, I would say.
Q. But you saw to it that they were followed out during that period of time?
A. To the best of my ability, yes.
Q. And as to your duties as a sales representative during that period, 1930 to August, 1937, what was the nature of those duties?
A. Well, as sales representative for the Company I received my instructions from the main office.

Q. What were your duties?

A. Solicitation and sale of material manufactured by the Company.

Q. The Company includes among the products it sells rigid steel conduit, does it?

A. Yes, sir.

1082 Q. And has done so ever since you have been connected with the Company?

A. Yes, sir.

Q. Over what territory does it solicit and sell and ship that product, Mr. Jacob?

A. I would say that our most active markets are New York State, New England, the Atlantic Seaboard and the Pacific Seaboard.

Q. Do you regularly solicit new business in other areas than those you have just described?

A. Well, we take an occasional order, a spot order at points within the interior of the country, but I would say that we do not normally solicit business as a regular practice.

Q. Well, how far west of the location of your plant do you normally solicit business?

A. I would say Buffalo would be our farthest western point that we earnestly solicit business.

Q. Well, whether you earnestly solicit it or not, do you regularly solicit business west of Buffalo?

A. Well, we have a sales representative at Cleveland, but his activities have always been limited. We purposely do limit them. We are not anxious to have much business in that part of the country.

Q. Well, does he solicit business on rigid steel
1083 conduit in Cleveland?

A. He solicits business and offers the business to us and we can take it or leave it as we see fit.

Q. You do take business which he does solicit and secure, do you?

A. I would say that we do not take it all.

Q. Well, a substantial part of it?

A. Well, I do not think I am in position to give you percentage, but we take a reasonable percentage of it.

Q. Enough to justify keeping him in Cleveland?

A. No, he could not begin to exist on the sale of our product alone. He is a manufacturer's agent and represents a great many other lines in addition to our own.

Q. But he has constantly represented you in that city, in that district, is that correct?

A. No, that would not be true.

Q. Well, for how long has he represented you there?

A. I would say probably a period of three years.

Q. Well, since he began, he has constantly represented you there, hasn't he?

A. In the limited way that I described before.

1084 Q. What about shipments into West Pennsylvania?

A. We don't solicit business in western Pennsylvania.

Q. How about Philadelphia?

A. We have a sales agent in Philadelphia.

Q. Regularly soliciting business for you there?

A. That is right.

Q. Do you regularly accept business that he gets for you there?

A. If credit and other conditions are satisfactory, yes.

Q. And as to some customers, you find those to be satisfactory, do you?

A. I didn't get the question.

Mr. MacIntyre: Please read the question.

Trial Examiner Norwood: Read it.

(Question read.)

A. I don't get you.

By Mr. MacIntyre:

Q. You say if you found credit and other conditions satisfactory there, you would. I said as to some customers you found those conditions satisfactory, do you?

A. That is right.

Q. You have told us about your activities with the company in connection with putting out price sheets.

1085 Your price sheets are in evidence here as Commission's Exhibit 53. Your counsel has also submitted Commission's Exhibit, for identification, 71-C to Q, inclusive, as the freight rate schedule of your company.

Do you recognize it as such?

A. Yes, sir.

Mr. MacIntyre: If your Honor please, I offer that document in evidence at this time as Commission's Exhibit 71-C to Q.

Trial Examiner Norwood: Any objection?

COMMISSION'S EXHIBIT NO. 71-C to Q was offered and received in evidence.

By Mr. MacIntyre:

Q. Mr. Jacob, I am showing you Commission's Exhibit 53 Z 58 to Commission's Exhibit 53 Z 63, your price card 84-A and 84, issued by you on January 13, 1941, and ask you to refer to that and also to refer to Commission's Exhibit 71-C to Q, and explain to us just how you calculate delivered price quotations to a customer located in Albany, New York, giving us the figures that you use, the pages from those exhibits that you refer to, and the method in applying those.

Mr. Austin: May we go off the record?

1086 Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: On the record.

By Mr. MacIntyre:

Q. In that connection, Mr. Jacob, I also hand you Commission's Exhibit 73-B, which the record shows is the duplicate of a delivery charge booklet issued by your company and used by your company. If you need to refer to it in connection with your answer you give to the pending question, you may do so.

A. I believe we have one of these of our own, have we not, Mr. MacIntyre?

Q. Well, the record is to the effect that it is the same as Commission's Exhibit 73-B. I will also ask that you confine your answer to one-half inch conduit and tell us when you apply the computation to what kind of conduit, whether it is galvanized, or enameled, and what size order.

A. Well, Mr. MacIntyre, I would like to preface my remarks by stating that I very seldom have occasion to actually figure prices. We have a quotation department and a billing department that usually take care of the details.

In answer to your inquiry, I will do the best I can to set the prices up for you, but it has been some time

1087 since I have had occasion to do this.

Do you want the various steps in the computation of this price, or are you interested only in answer?

Q. Yes, give us each step and refer to the exhibit page number, so the reporter will get that.

A. I think our first procedure would be to establish if the shipment involved a carload or less.

Q. Well, assume that it is a carload.

A. If it is a carload, then we would further assume that it is galvanized for the establishment of a point. We first take this price $5.25 per hundred.

Q. What exhibit number are you referring to now?

A. 53 Z 61. We would reduce that $5.25 six per cent, being the jobber's commission. There would be a net price of $4.835. $5.25 reduced by six per cent, would be $4.835.

You spoke of the destination being Albany?

Q. Albany, New York.

A. We would consult our freight rate book under Albany, New York, carload rate 37¢ per hundred pounds. That is Commission's Exhibit 71-H.

Q. You are referring there to Commission's Exhibit 71-H; is that correct?

A. That is right. Then in order to reduce that freight rate of 37¢ per hundred pounds into a unit on which
1088 we sell, namely, per hundred feet, we would consult our freight adder.

Q. What are you referring to now there, what exhibit number?

A. I am referring to Commission's Exhibit 73-B, and under the 37¢ rate, half inch size, would be 33¢ per hundred feet.

Q. How much?

A. 33¢ per hundred feet. That is on page 7 of Commission's Exhibit 73-B. Our price delivered at Albany is really $5.165, and we would say $5.17 per hundred feet.

Q. That is on galvanized?

A. That is on galvanized conduit, half inch.

Q. Now, in your reference to that Commission's Exhibit 73-B, why is it that you took the 37¢ rate and specifically, as it appears thereunder one-half inch size, rather than taking the 37¢ rate as it might appear in that booklet under some other size?

A. Well, I believe this delivery charge—I just believe this, I could not prove it—these various freight rates were set up for the various sizes of conduit, 37¢ per hundred pounds, for example, on half inch conduit, would be less per hundred feet than it would be for two inch, say, which is much heavier, and if we took a rate that
1089 was applicable, say, on two inch conduit, and added that to our price on half inch, our base price, we would arrive at a cost that would be out of line, would not be competitive.

Q. Now, why did you take, in your reference to that Commission's Exhibit 33 Z 61, $5.25?

A. Well, you established the carload of the unit you are talking about, for consideration, and that is our price at basing point for half inch conduit in carload quantities.

1090 Q. At what basing point?

A. Pittsburgh basing point.

Q. Why did you, in computing such price for Albany, New York, use a Pittsburgh basing price?

A. Well, it is the practice that we have followed for a great many years.

Q. Well, why do you follow the practice?

A. Well, it seems to be one of the methods of computing prices. It is certainly the easiest so far as we are concerned.

Q. You say "method of computing prices"; you mean by yourself alone or by yourself and others?

A. Well, I would not know what others are doing, but so far as we are concerned it is an easy and satisfactory method of computing prices.

Q. Do you want us to understand from your testimony here this morning, Mr. Jacob, that you don't know whether your competitors use that same method or not?

A. I could not say.

Q. Is it your testimony that you do not know whether your competitors use the same method in computing their delivered price quotations?

A. I would not know.

Q. You don't know that they issue price sheets and freight rate schedules and delivery charge booklets

1091 such as those you have just referred to carrying identical figures with those you have just given us, do you?

A. That is right.

Q. And that they issued the same at about the time that your Company issued similar numbered booklets and price sheets?

A. Well, I wouldn't know about the time element there, Mr. MacIntyre.

Q. You know it didn't take place some time months after or months before that you issued similar booklets? Is that correct?

A. I wouldn't say that it was always true.

Q. Well, let us take that card 84 that you are referring to, of your Company. You do know, as a matter of fact, that at about that time your competitors issued card 84. The date is January 13, 1941.

A. That is right.

Q. You know that approximately that date your competitors issued card 84 of their own carrying the same basing point prices in theirs, is that true?

A. Well, again I would say I wouldn't know exactly as to the time element involved. Our card may have been issued two weeks, three weeks, or two days after one of the other cards.

Q. But you know that they issued card 84?

1092 A. That is right.

Q. Do you know whether you issued in advance of their issuing or not?

Mr. Robison: Mr. Examiner, I object to the term there "issuing". It is too indefinite. It does not appear but some may have been before or some may have been after.

Trial Examiner Norwood: The objection is overruled. We can find out about that. Answer the question.

The Witness: Would you repeat the question please?

Trial Examiner Norwood: Read the question.

(The question was read.)

The Witness: Are you referring to this particular card, Mr. MacIntyre?

By Mr. MacIntyre:

Q. Yes.

A. I think our card was issued after we saw another card of our competitors.

Q. You knew then at the time that you issued this that the others were being issued by your competitors; is that correct?

A. Well, when you say "others", do you mean other manufacturers were issuing the card?

Q. Yes, conduit.

A. Well, I don't think I could answer for the other manufacturers. I know that we decided to issue a card.

Q. As a matter of fact, though, Mr. Jacob, you

1093 do know that the others were issuing cards of that number with the same basing point prices in them?

A. Well, I think that later on it developed that all manufacturers did issue a card 84, but I don't think we

knew at the time that we issued our card whether other manufacturers issued similar cards.

1094 Q. If you did not know that other manufacturers were issuing their cards at the time you issued yours, what prompted you to issue this card 84?

A. I believe I stated I did not know they were all going to issue their cards.

Q. But you knew that some of them had already issued?

A. We had already seen copies of this card 84.

Q. Issued by some of your competitors?

A. That is right.

Q. Can you tell us who they were?

A. I do not think I could, because the—I can't recall it to mind at the moment. The card was forwarded to us by one of our salesmen.

Q. It had been by one of the manufacturers of Rigid Steel conduit?

A. Do you mean the issuance of the card?

Q. Yes.

A. Yes.

Q. Do you know why the figure $5.25 as the Pittsburgh basing point price as here shown by that exhibit, Commission's Exhibit 53 Z 61 was used, rather than some other figure, say, $5.00, or $5.10?

A. No, I do not think I could answer that question.

Q. Can you answer that as to any basing point price that appears on any of your cards which are here

1095 in evidence?

A. No, I do not believe I could.

Q. Is there anyone in your organization or your company that could tell us, to your knowledge?

A. So far as I know now, I would say no.

Q. Can you tell us, as general manager of your company, why it is, then, that such figure is accepted and used by your company?

A. Well, I think that is a matter of plain business. We feel that we are entitled to secure as much for our product as any other manufacturer of like material. By the same token, we feel that our jobbers are entitled to as low price as we can afford to sell. If that happens to be in agreement with competition, all right; if it is not, we do the best we can.

Q. Now, taking that part of your statement that you felt that you were entitled to as much as you can get, what did you mean by that?

A. By that I meant we—our prices should reflect as high price as what there is in the market, if we are able to get it.

Q. Do you mean by that, as high price as those prices quoted by your competitors?

A. That is right.

Q. Now, coming back to this Commission's Ex-
1096 hibit 71-C to Q, which is your freight rate schedule. Will you please tell us what the source of that booklet is?

A. Well, frankly, Mr. MacIntyre, I do not know. One of these booklets, I do not know whether it is the delivery charges or the freight rates, was printed up for us in Pittsburgh.

Q. By whom?

A. That is information that I cannot give you, I do not know.

Q. Well, under whose supervision?

A. Well, there is a letter in our file, I believe, that indicates that we ordered these from a printer in Pittsburgh.

Q. Did you compile them, send them to the printer and ask them to print them for you?

A. No, the printer wrote us and told us that he had this booklet already printed, that if we wanted them, he would be glad to forward them to us, print our name on them, and we ordered a quantity of them.

Q Didn't you, in that connection, have some arrangement with Charles Donley, the Respondent here, concerning the compilation of such a booklet?

Mr. Houston: What booklet?

Mr. MacIntyre: About this Commission's Exhibit 71-C to Q.

1097 Mr. Houston: Those are the freight schedules?

The Witness: That is the freight rate schedule itself; the actual freight rate you are talking about now?

By Mr. MacIntyre:

Q. Yes.

A. I do not know whether we had a contract with the Donley Company or not for furnishing these freight rates to us, but I do know that we received occasional changes in rates, and they might come from the Donley Company. I do not see all the mail, so I would not be able to say offhand.

Q. Well, you, as general manager of your company, know that you have had arrangements with Mr. Donley for preparing and compiling freight rate schedules for submission to a printer in Pittsburgh; is that correct?

A. I do not think that that is the case, Mr. MacIntyre. I know of no actual contract that we entered into with the Donley Company for producing such material for us.

Q. You know that you have paid him some money, don't you?

A. We have paid him money from time to time for forwarding these revisions of freight rates to us.

Q. That is, some of the material that is included in that booklet; is that correct?

1098 A. Yes, I would say that that is correct.

Q. Will you tell us whether or not that page that you referred to, Commission's Exhibit 71-H is—do you say it is one of the pages that you did not get from him?

A. Why, I think that would be a matter rather difficult to identify, don't you? That is a printed sheet, and without any identification on it. I would say it probably came from the Donley Company.

Q. Now, for what purpose, other than the computation of delivered price quotations such as you made here this morning from that sheet, can you use any of the information that appears in Commission's Exhibit 71-C to Q?

A. Will you repeat the first part of that question, please?

Mr. MacIntyre: Read the question.

(Question read.)

The Witness: We use this freight adder in compiling delivery prices on tubular products we manufacture and sell.

By Mr. MacIntyre:

Q. What I am talking about now, with respect to Rigid Steel conduit, for what purpose, with respect to it, can you use it, other than the use you made of it this morning in showing how you compute a delivered price?

A. Offhand, I would know of no other particular 1099 use for it.

Q. You cannot use it in connection with computing freight rates for your shipments of conduit, can you?

A. No.

Q. Well, now, coming back to this situation at Albany,

you told us about a price there, $5.16½; you said it would be $5.17. Suppose we take the base price, net base price which you figured at $4.83½. If you took that price and added the freight from your mill to Albany, what would be the laid down cost to the consumer or the buyer?

A. Well, we never figure prices that way.

Q. Why not?

A. It has been the practice of the steel industry for a long period of years selling tubular products on a basing point value; I know of no instance where we have been called upon to quote a price on a FOB mill basis.

Q. Well, do you generally do so?

A. Do we generally do what?

Mr. Stewart: Does he generally do what?

Mr. MacIntyre: Quote prices on an FOB mill basis at his mill.

Mr. Stewart: Well, why don't you ask him that?

1100 If you asked him that I would have understood your question.

The Witness: No, we do not quote FOB mill.

By Mr. MacIntyre:

Q. And you quote in the manner that you do because it is the practice in the industry; is that correct?

A. That is right.

Q. Now, Mr. Jacob, if you and your competitors use a method in quoting a price for, that is, a delivered price quotation for Albany, New York, such as you have done here this morning, can you see how the result arrived at would be any different than any other?

Mr. Stewart: Now, I object to that as calling for an opinion from the witness, which he has not been qualified to express, and ask that you read the question to the Examiner.

Trial Examiner Norwood: Read the question.

(Question read.)

Trial Examiner Norwood: As between one and the other?

Mr. MacIntyre: Yes, that is right.

Mr. Stewart: One and the other what?

Trial Examiner Norwood: The objection is overruled. That is very clear.

Mr. Stewart: It is not clear to me.

1101 Trial Examiner Norwood: One or the other competitors.

Mr. Stewart: Of course, it assumes that his competitor is going to compete at Albany, I assume that.

Trial Examiner Norwood: Well, I think we will let him answer that.

Mr. Stewart: All right.

Trial Examiner Norwood: You can cross-examine him on it all you want to.

The Witness: Why, we would not be in position to know what, how our competitor figured their prices.

Trial Examiner Norwood: Well, if they used a different method, or different factors, would they be different from this?

The Witness: Yes, I would say they would be.

By Mr. MacIntyre:

Q. Can you say how they would be any different, if they use the same factors and the same method?

Mr. Stewart: Well, obviously, I submit that is an obvious question.

Trial Examiner Norwood: Well, now, wait a minute. Does counsel object to that question?

Mr. Stewart: Yes, I do, on the ground that the question answers itself, for the reason if they use the same
1102 method, they get the same result. He doesn't have to ask the witness for the answer to that question.

Trial Examiner Norwood: Well, he has the right to know the witness' attitude, without being told it is identical.

1103 Mr. Stewart: That is what he said in his question, sir.

Trial Examiner Norwood: The objection is overruled. Read the question.

(The question was read.)

Trial Examiner Norwood: Answer the question.

The Witness: "By quoting factors", I presume you mean some—

By Mr. MacIntyre:

Q. Basing point prices, freight rate tariffs and delivery charges.

A. Well, there could be a small discrepancy in this particular price of the $5.16½, whatever we figured—$5.16½. Some manufacturers may drop the half, others may add the half, I think that would be—

Q. But insofar as they add the half, could there be any difference?

A. The only difference that would accrue would be preferentials beyond that price.

Q. Well, as long as they adhere to the factors, they would be the same, is that correct?

A. I would say yes.

Q. And it would be only when they departed from the use of the method or the use of the factors that they
1104 could be different, is that correct?

A. I would say yes.

Q. I believe you told us that you had seen the price cards of your competitors, that is of a comparable number. Have you ever seen one of a comparable number?

Mr. Stewart: Now, just a moment. If Mr. MacIntyre is going to quote the record I ask him to quote the record correctly. If he is going to ask the witness if he said so and so, that is another matter, but I submit that if he is going to quote the record he must quote it correctly. I did not understand the witness to say he had seen the price card of his competitor. He said he had seen some of these—

Trial Examiner Norwood: Read the question.

Mr. MacIntyre: Did I say all competitors?

(The question was read.)

Trial Examiner Norwood: Did you use the expression "comparable" number, Mr. Jacob?

The Witness: No, sir.

Trial Examiner Norwood: The objection is sustained. Counsel can reform the question.

By Mr. MacIntyre:

Q. Mr. Jacob, you in referring to your price card 84 from which you made a computation this morning, told us that you had seen price cards of your competitors
1105 numbered 84, is that correct?

A. I do not believe I used any number, Mr. MacIntyre.

Q. Well, you were referring to that and you said price cards issued about that time.

A. I do not think it referred to any particular number though.

Q. But you were referring to your 84 then?

A. That is right. You had 84 in my hand at the time.

Q. Now, at the time that that price card was issued, do

you know of any of your competitors who issued a price card other than 84?

A. At that time, you mean?

Q. Yes.

A. No, I have no knowledge of that.

Q. And you saw some of those that were issued?

A. We saw at least two copies.

Q. Of your competitors?

A. Two copies of our competitors' cards.

Q. And who were they?

A. I believe I stated I did not remember who they were; they were forwarded to us by one of our salesmen.

Mr. MacIntyre: Off the record a moment.

Trial Examiner Norwood: Off the record.

(Discussion off the record.)

Trial Examiner Norwood: On the record.

1106 By Mr. MacIntyre:

Q. Mr. Jacob, can you tell us any other reason why your Company uses this method that you described here this morning in figuring delivered price quotations other than the reason that it is the practice in the rigid steel conduit manufacturing industry?

Mr. King: There again, Your Honor, I object. He is misquoting the record. The witness did not say that was the only reason. He said it was a simple, practical method.

Trial Examiner Norwood: The objection is overruled. He is trying to find out now whether it is the only reason. Go ahead.

Mr. Poskanzer: May I have the question read?

Trial Examiner Norwood: Read the question.

(The question was read.)

Trial Examiner Norwood: Answer that.

The Witness: Well, I believe in my statement before I mentioned that it was a common practice in the steel tubular industry. This matter of basing point is not only applicable to rigid conduit but all tubular products as well, and it certainly offers a convenient, satisfactory and quick method of compiling prices, and of course, in addition to the fact that it has been in vogue for a great many

1107 years. I think it came in very shortly after the introduction of tubular products to the field, and that has been—

By Mr. MacIntyre:

Q. Upon what are you basing that last statement?

A. Well, from what I have heard. I would not want that to be as actual testimony, but that is what I have heard.

Mr. MacIntyre: Then, I ask that the last statement of the witness about when it came in be stricken. It shows he is basing it on hearsay.

Mr. Robison: I think it is proper, Mr. Examiner. We ordinarily take matters of family history which can only be what the witness has been told. He does not know when he was born, for instance, except what he has been told, and this is the same sort of thing.

Trial Examiner Norwood: The motion is denied.

It is information which we might find relevant.

By Mr. MacIntyre:

Q. Who told you that, Mr. Jacobs?

A. Well, I have been associated with the iron and steel industry now for quite a few years, and in talking with my predecessor and reading on the matter myself that information has come to light a great many times.

Q. And did you in that connection ascertain why these people who first used the basing point system of quoting delivered prices or basing point prices in the tubular 1108 goods section of the steel industry used it?

A. No, I do not believe I have ever seen any actual specific reason for it except that it grew up with the industry.

Trial Examiner Norwood: Well, is there any particular advantage in it which accrues to the tubular products that would not be enjoyed by other products?

The Witness: Well, you might carry it one step further, if you want to, Judge, carry it one step further, by stating that the matter of basing points is applicable to the entire steel industry. It might be that will answer your question.

Trial Examiner Norwood: Yes. Thank you.

By Mr. MacIntyre:

Q. Do you know of any product in the steel industry including tubular goods which is quoted and sold only on basing point prices computed at Chicago and Pittsburgh?

Mr. Stewart: Just a moment, please. Are you making a statement or are you asking him that question?

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Mr. MacIntyre: Please let the reporter read the question.

Mr. Stewart: I ask that the question be read.

Trial Examiner Norwood: Read the question.

(The question was read.)

Mr. MacIntyre: That is a question.

1109 Mr. Stewart: All right. I thought you were making a statement.

Trial Examiner Norwood: Answer the question.

The Witness: Well, I think, Mr. MacIntyre, if you will consult the Iron Age, you will see that a great many steel products are sold on other basing points, other than Pittsburgh or Chicago.

By Mr. MacIntyre:

Q. Why is it that rigid steel conduit is sold only on basing point prices plus freight from those two locations?

Mr. Poskanzer: I object to this unless the witness is qualified as an expert.

Trial Examiner Norwood: The objection is overruled.

Mr. Stewart: If he knows.

Trial Examiner Norwood: Yes, answer that if you know.

The Witness: I would not know, Mr. MacIntyre.

1110 By Mr. MacIntyre:

Q. It would simplify matters for you in your quotation of delivered price quotations if you had only one basing point from which you figure prices; is that correct?

Mr. Poskanzer: What is the question?

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Poskanzer: I object to that as calling for a conclusion of the witness.

Trial Examiner Norwood: Overruled.

A. Well, as a practical answer to your question, actually we do so little business in the Chicago area, that we practically are on a single basing point.

By Mr. MacIntyre:

Q. Well, as to that business, though, that you do in the Chicago territory, if you did it all on the Pittsburgh base, would it be less difficult for you to figure your delivered price quotations for all of your territory?

A. No, I don't think there is any particular difficulty involved there.

Q. Would there be if you had ten basing points instead of the two?

A. Oh, it might be a little more troublesome than just having two.

Q. In what way?

1111 A. Well, in compiling prices, the lowest freight from basing point to destination is applied to the base price, and if multiple basing points had to be considered, it would mean establishing of the lowest freight rate involved.

Q. Well, now, taking your price card 84, Commission's Exhibit 53 Z 61, if you were showing prices from ten basing points instead of two there, it would just be a matter of listing those for the eight additional basing points; is that correct?

A. The prices would be correspondingly different just as they are dissimilar here, for Pittsburgh and Chicago.

Q. Why would that be necessarily true?

A. Well, the freight rate involved between the basing points.

Q. Why would you have to consider the freight rate between the basing points, in arriving at the differences between basing point prices?

A. Well, Mr. MacIntyre, somebody has got to pay for the material, the freight involved in moving the raw material, especially from point to point, from point of manufacture to point of shipment. The customer should be asked to absorb that in the final analysis.

Q. Why is it that you don't now then include 1112 freight rates from the point where your raw material is produced to the place where you produce conduit from it? And then from there to the place where you deliver the finished conduit to the customer?

A. Well, actually we do.

Q. How do you?

A. By using the Pittsburgh basing point.

Q. Is your raw material produced in Pittsburgh?

A. No, but it is produced at the point where the freight rate would be comparable to the Pittsburgh rate to our plant.

Q. Isn't it a fact that some of your raw material from which you manufacture conduit is manufactured at Lackawanna right out of Buffalo?

A. That isn't true.

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Q. Where is it manufactured?

A. Sparrow's Point, Maryland, and some from Pittsburgh.

Q. Well, as to that raw material that you get from Sparrow's Point, Maryland, do you have the same freight rate on that that you would from Pittsburgh?

A. I would like to have one point clarified here, if you will, Mr. MacIntyre. What raw materials are you talking about?

Q. I am talking about pipe.

A. We don't buy pipe, that is, normally used for
1113 conduit purposes.

Q. Do you make that at your plant?

A. We make pipe, yes.

Q. So as to that raw material, then, the only thing you need to do is to figure the freight rate on it from your point of production of conduit to the place where you sell it?

A. Well, what raw material are you now talking about?

Q. I am talking about pipe, steel pipe.

A. I just told you that we don't buy steel pipe.

Q. No, but I say, since you make that at Cohoes, New York, you only need to figure the freight rate on it from there to the point where you turn it over to the customers; is that correct?

A. We happen to buy skelp, which is used to make pipe. We have to buy 150 pounds of skelp or 110 pounds of skelp to produce 100 pounds of pipe. We have to pay freight on the entire amount.

Q. Now, of course, you buy coal in the production of your pipe from skelp, too, don't you?

A. We buy coal from the Pittsburgh district, yes. We buy a great many other products that are sold to us on the Pittsburgh basing point. We buy zinc, for example, on the East St. Louis basing point.

Q. And you buy fluxing stone from where?

1114 A. Flux, I believe is somewhere out west. I could not tell you exactly. Sulphuric acid is at another basing point. As a matter of fact, practically everything we buy is bought on some basing point or another.

Q. Isn't it a fact that you buy some limestone prepared for fluxing stone, from Hudson River quarries?

A. We buy no limestone.

Q. What do you use for fluxing stone?

A. We don't flux in that way. All we would buy would be sand.

Q. And where do you get that?

A. That is delivered from somewhere in the Pittsburgh district, fine river sand. That is only used for furnace bottoms.

Q. Your zinc comes from St. Louis and everything else that you use comes from Pittsburgh; is that correct?

A. Zinc doesn't come from St. Louis.

Q. Well, you say you bought it on an East St. Louis basis.

A. That is right.

Q. Where is it shipped from?

A. Meadowbrook, West Virginia.

Q. So, with the exception of your zinc from Meadowbrook, West Virginia, you buy everything else from Pittsburgh?

A. I wouldn't say everything.

1115 Q. But I believe when you produce your pipe and make conduit out of it, you don't pay the freight on it from any other place than from your mill?

A. We pay the freight on the raw material, the skelp used to produce that pipe.

Q. I am talking about the pipe now, Mr. Jacob.

Trial Examiner Norwood: Answer his question.

The Witness: Read the question.

Trial Examiner Norwood: Read the question.

(Question read.)

The Witness: I don't believe I follow you, Mr. MacIntyre.

Trial Examiner Norwood: Read the previous question.

(Previous question read.)

By Mr. MacIntyre:

Q. As fabricated into conduit?

A. Well, after it is fabricated into conduit, it is at our plant in the warehouse.

Q. And you don't pay freight on it from any other point, except your factory to the point where it is sold?

Mr. Stewart: I submit, Mr. Examiner, that is more or less a ridiculous question. They manufacture the pipe; of course, they don't pay freight on it.

1116 Trial Examiner Norwood: Let him say what he can about it. The objection is overruled.

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Mr. Stewart: There is such a thing as baiting the witness.

Trial Examiner Norwood: I don't think so.

Mr. MacIntyre: Please read the question to the witness.

(Question read.)

Trial Examiner Norwood: Is that correct?

The Witness: I would say that is an obvious answer.

By Mr. MacIntyre:

Q. Obvious in which way; yes?

A. Yes, if the pipe is there, we don't pay any freight on it.

Q. Now, Mr. Jacob, in your use of this method of calculating delivered price quotations through the use of the factors that we have discussed here earlier this morning, you have told us that if the same method, same factors were used by you and one of your competitors, that you would get the same results. Do you reall that?

A. Yes.

1118 Q. Mr. Jacob, in referring to Commission's Exhibit 53 Z 60 to Z 63, and Commission's Exhibit 57 Z 28 to Z 31, inclusive, the same being your price card 84 and the price card of Triangle Conduit & Cable Co., Inc., respectively, don't you know that after examining price cards such as those of your competitors, that if they use price factors which they quote, such as the Triangle Company does there, and such as you quote in yours, and use the same freight rate factor in arriving at a delivered price quotation, that the quotation of that company is going to be the same as your quotation to a customer in the same town on the same quantity of, say, galvanized one-inch conduit?

1119 A. Well, I think I would want to examine this particular card more carefully to see that prices are identical, as you have indicated. Apparently there is some difference here. I see that, in an example here, we quote half-inch Indian black enameled conduit delivered in New York City. Triangle quotes half-inch Triangle hot dipped galvanized conduit delivered in New York City carload shipments. The carload shipments on both. I would say that I would want to examine the card more carefully before attempting to answer your question.

Q. Well, take those two cards and then take Commis-

sion's Exhibits 71-C to Q, your freight rate compilation, and Commission's Exhibit 73-B, which is shown by the evidence here to be a delivery charge booklet, the same as yours, and tell me if after the examination of those if the Triangle Company did not depart from the method of calculating prices such as you have outlined here used as price cards, whether its price on the same quantity of the same type of products in Albany would be any different from yours?

Mr. Stewart: I submit, Mr. Examiner, that the witness not being connected with Triangle and not pretending to know the Triangle price card, the question is incompetent.

Trial Examiner Norwood: The objection is overruled.

The Witness: As I understand it, you want me to figure the price that Triangle might charge delivered
1120 at Albany?

By Mr. MacIntyre:

Q. Yes, answer it quoted on the basis of that card.

A. And you are assuming that they would use the same freight rate and the same delivery charges?

Q. Commission's Exhibit 57-Z-28 to Z-31.

A. I say you are assuming that they use the same freight rates and the same delivery charges?

Q. Well, do you use anything other than a correct freight rate in calculating your delivered price quotations, Mr. Jacob?

A. No, but the rate—

Q. I am assuming then that your freight rate is correct and that they would use a correct freight rate as is shown by Commission's Exhibit 71-C to Q.

A. Well, I would be glad to try and figure this price out for you, if I can. What size are you talking about now?

Q. The same quantity, same size and same kind that you figured on for your company for Albany.

Mr. Stewart: That is half inch galvanized in carload lots?

Mr. MacIntyre: That is true.

Mr. Stewart: I suggest, Mr. Examiner, we take a five minute recess while the witness does the calculating.

1121 Trial Examiner Norwood: We will take a five minute recess.

(Thereupon, a short recess was taken.)

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Trial Examiner Norwood: Proceed.

Mr. MacIntyre: I believe there is a question pending.

Mr. Stewart: Am I right that the pending question was you are asking him to figure the price on Triangle material laid down in Albany?

Mr. MacIntyre: If he uses the Triangle card 84.

The Witness: And that we are using Exhibit 73-B, this delivery charge?

Mr. MacIntyre: That is correct.

The Witness: And the freight rate adders here, 71-H? The freight rate appears on that schedule.

Mr. MacIntyre: Just a moment, Mr. Jacob. Here is Commission's Exhibit 79, which is the Triangle freight rate compilations.

The Witness: I better look at those. These freight rates change from time to time.

By Mr. MacIntyre:

Q. Now, instead of using Commission's Exhibit 79-H, suppose that you use as a freight rate the tariff shown on Commission's Exhibit 79-Z-193. Then tell us what result you would get in computing the price that I have
1122 asked you to compute.

A. If my arithmetic is correct it would be $5.265 delivered.

Q. And how does that compare with the price you would quote on the same product, same quantity for your company?

A. Well, my arithmetic was bad in my first calculation, but if you want to correct the original computation, it would be the same, $5.265.

Q. Now, if Triangle used those factors and that method of figuring, and you used your factors and your method of figuring which you have outlined this morning, do you know that Triangle, or had reason to believe that Triangle was going to do so, you would know what quotations they would be making or would expect to make; is that correct?

A. Not necessarily.

Q. Why?

A. We quote prices to our jobbers. The jobber in most instances considers himself as to whether he wants to quote the price that we suggest to him or quote a higher or lower price.

Q. Well, I am talking about prices to your jobber. I

think we have taken care of that by your discount, less six per cent you figured into this thing?

A. That is right.

Q. So, taking that into consideration then, what
1123 is your answer to my question?

A. I would like to hear the question again.

Trial Examiner Norwood: Read the question.

(The question was read.)

Mr. MacIntyre: Let us start all over and I will ask you another question.

By Mr. MacIntyre:

Q. If you knew that Triangle was using this freight rate compilation, Commission's Exhibit 79-Z-183, and Commission's Exhibit 73-B, and Commission's Exhibit 57-Z-28, in making up a quotation for Albany, New York, you could tell in advance what that quotation would be as to any of the products mentioned in that price sheet and as to any quantities permitted to be shipped under it, couldn't you?

A. Well, if we knew they were following that procedure, yes.

Q. Well, as long as they followed the procedure you could tell; is that correct?

A. I would say, providing there weren't any special discounts involved.

Q. But as long as they followed the procedure and stayed away from special discounts, you could tell; is that correct?

A. I would say that would be true, yes.

Q. Mr. Jacob, since you have been with your company you have known of its membership in the Rigid
1124 Steel Conduit Association, have you?

A. Yes, sir.

Q. You have, as a representative of your company, attended meetings of that Association or members of the Association?

A. Some.

Mr. MacIntyre: That is all.

Trial Examiner Norwood: Examine him.

1125 Mr. MacIntyre: Oh, there is one further question, if I may ask.

Mr. Stewart: He meant that is all temporarily.

Mr. Poskanzer: I will make that statement, the conduit

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business now operated by the Cohoes Rolling Mill Company was originally conducted by Mohawk Conduit Company, and I believe its name was later changed to Mohawk Tube Company, Inc., and as of January 1, 1934, Cohoes Rolling Mill Company, then an existing corporation, engaged in other branches of the steel industry was merged with the existing Mohawk Tube Company under the name of Cohoes Rolling Mill Company and has operated since that time under that name.

Mr. MacIntyre: And has since carried on the business of manufacturing and selling conduit of the Mohawk Tube Company's brands?

Mr. Poskanzer: Yes, the two corporations were actually merged and the two businesses are now carried under the one name.

Mr. MacIntyre: Under the name of the Cohoes Rolling Mill Company?

Mr. Poskanzer: That is right.

1126 Mr. MacIntyre: That is all for the witness.

Cross-Examination by Mr. Stewart.

Q. Mr. Jacob, will you be good enough to explain for the record just what conduit is?

A. You are talking about rigid steel conduit?

Q. Rigid steel conduit.

A. Well, rigid steel conduit is an electrical raceway. It is used in construction projects where wiring has to be protected from the elements, also possible fractures. Rigid steel conduit is used on large projects because it offers support for the fixtures and other appurtenances that are usually attached to wiring devices. It is finished in accordance with the underwriters standards. It is normally sold in ten foot lengths, with coupling at one end and threads on the other, and the weight of pipe, sizes of pipe are set by the underwriters laboratories. I believe that we as a manufacturer are under the direct control, and our manufacturing process under the direct control of the underwriters laboratories, and should we at any time violate any of their principles or code the manufacture is stopped at our plant until that condition is corrected.

Q. Now then will you also go on and explain how rigid steel conduit is made, beginning with the raw material, as

I gather my friend on the other side did not quite understand.

1127 Mr. MacIntyre: Well, I object to going through all the processes of manufacture. I do not think it is necessary to the issues involved in this case. I think it is irrelevant and immaterial.

Trial Examiner Norwood: This appears to be a departure. It may not be. I will ask counsel what he wants to show here.

Mr. Stewart: Well, I am developing further, in view of the fact that Mr. MacIntyre seemed to be an authority on flux, and several other products, I would like the gentleman to explain just what enters into the manufacture of rigid steel conduit.

Trial Examiner Norwood: Well, unless it bears in some way on the issues I see no reason in this particular case, unless it bears on the direct examination.

Mr. Stewart: Well, I should think it would be of interest to know how conduit is really manufactured, that is the point, what it is and what enters into it, particularly from the standard of basing point.

1128 Trial Examiner Norwood: I think for the purpose of informing the Commission you may show that by some one witness one time, I think.

Mr. Stewart: That is all I am trying to do.

Trial Examiner Norwood: Do you think that this is the witness to do that? He is your witness when you are doing that.

Mr. Stewart: Well, I think that in view of the fact that virtually all of the elements were gone into on direct examination, that I have the right to show what the real fact was. That is all.

Trial Examiner Norwood: Well, if your question bore on the freight situation, all right, but merely to inform us about the other is really not proper evidence on cross-examination.

Mr. Stewart: All right. Then I will withdraw the question in the form it is.

By Mr. Stewart:

Q. Mr. Jacob, what is the principal product used in the manufacture of rigid steel conduit by your company?

A. Black pipe, black steel pipe.

Q. And getting back to the original materials from

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which that is made, what is the principal—that is by your company?

A. Skelp, that is spelled s-k-e-l-p.

1129 Q. And where do you purchase that?

A. Are you talking about, of our present source of supply?

Q. Well, not necessarily; generally.

A. We have purchased it from the Pittsburgh district. At the present time we are buying it from Sparrow's Point, Maryland.

Q. And that I take it from your direct testimony is also on the Pittsburgh basis?

A. No. Skelp is sold on several basing points.

Q. Oh, what ones, for example?

A. Well, I know Sparrow's Point, Pittsburgh, Chicago, I believe, but I know it is sold on a multiple basing point, I could not give you the exact number.

Q. Now, based on your experience in the rigid steel conduit industry, take the period between 1936 until 1941, that is, prior to the present defense emergency, what would you say as to the extent to which price sheets were adhered to by the industry?

1130 The Witness: I would say that price cards were very—let me get a word, a good word here that will 1131 describe what I want—were adhered to in only a limited way.

By Mr. Stewart:

Q. So that in endeavoring to determine what your competitor was bidding on any particular product in the light of the situations which were suggested to you on direct examination, would it have been necessary for you to know to what extent they were adhering to the price cards?

A. Well, I would say that we could ascertain that through our jobbers who, when they made bids on various projects were able to get a recap of the bid, and then from that determine as to how much our prices were higher than or lower than the prevailing prices.

Q. And was that generally the method by which you determined what your competitors were bidding on particular projects?

A. That would be the only way we could determine it.

Q. Now, on your direct examination, as I recall it—If I am in incorrect in this you can correct me—you said that you did not know how your competitors were quoting.

Did you make that statement, or do you recall making that statement, and if you did, what did you mean by that?

A. I do not know whether that was the statement I made or not. Do you recall that?

Mr. MacIntyre: Certainly I do not recall the statement.

1135 By Mr. Stewart:

Q. Well, now, Mr. Jacob, as I understand your answers to Mr. MacIntyre's questions, and if I am not correct in my understanding of it, you correct me, the point of your answers, was assuming that all your competitors quoted with the same factors and on the same basis, the prices will be the same; is that what you meant?

A. Yes, if there were no special allowances beyond that.

Q. There is one more question I have to ask. Mr. MacIntyre referred to the membership of your company in the Rigid Steel Conduit Association. When, if you know, did the company resign as a member of that Association?

A. I believe it was in the summer of 1940,—or 1938. I am sorry.

Q. Well, the record shows that.

Mr. Poskanzer: 1938 is right, Mr. Stewart.

Mr. Stewart: Well, I know the record shows that. That is all.

Trial Examiner Norwood: Is there any redirect examination?

Mr. MacIntyre: I have one question.

1136 *Redirect Examination by Mr. MacIntyre.*

Q. Mr. Jacob, you told Mr. Stewart that these prices were adhered to in only a limited way. This answer was given before I objected.

Mr. Stewart: Go ahead and ask it. You do not need to apologize for asking it.

By Mr. MacIntyre:

Q. By your competitors.

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. Upon what did you base that answer?

A. On the abstracts of the bids that we had occasion to review.

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Q. Bid made by whom to whom?

A. Bids in some instances made direct by manufacturers on public openings, or bids made by jobbers on the same type of public openings.

Q. You are referring now to public openings such as those to The Panama Canal, and Bureau of Supplies & Accounts of the Navy Department?

A. Well, there could be other public openings as well, like the city of New York and municipal things.

Q. But did you have those in mind, The Panama Canal, and Bureau of Supplies & Accounts of the Navy Department, when you gave your answer?

1137 A. Yes, I would say that they might be included in public openings.

Mr. MacIntyre: That is all.

Recross-Examination by Mr. Poskanzer.

Q. Mr. Jacob, didn't you also get requests from your jobbers to make special discounts off the card?

A. That is correct.

Q. And that was a very frequent happening, wasn't it?

A. That is true.

Q. And you had to meet those special discounts off the card by cutting your own card?

A. A great many of our jobbers wrote and outlined the prices that were being quoted to their customers by apparently our competitors.

Mr. MacIntyre: I object and move to strike the witness' answer of what somebody wrote him of what somebody else did.

Mr. Poskanzer: I consent the last answer go out, if your Honor please.

Trial Examiner Norwood: The objection is overruled. (Witness excused.)

Trial Examiner Norwood: Call your next witness.

1138 Mr. MacIntyre: I call as the next witness, at the instance of the Commission, Mr. Hawks.

J. A. HAWKS was thereupon called as a witness for the Commission, and having been first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

Q. Please state your name?

A. J. A. Hawks.

Q. Mr. Hawks, what is your business and occupation?

A. Vice president in charge of sales of Triangle Conduit & Cable Co., Elmhurst, Long Island, New York.

Q. What are your duties in connection with your job?

A. In charge of sales of that company. At the present time?

Q. Yes.

A. Well, I guess the best way to sum it up is to say that I am in complete charge of all sales made by the company of materials covered by the catalog.

Q. And if so in complete charge, do you know anything about how those prices that your sales department quotes are made up?

A. I know about the prices that I authorize.

Q. Well, those that are in your price sheet, the price cards, so to speak, do you have any knowledge as to
1139 those at all, as one who is in complete charge of sales of your company?

A. As to the prices on those sheets?

Q. Yes.

A. Oh, yes.

Q. How long have you been in that position, Mr. Hawks?

A. Well, I have been in complete charge of sales since, I am quite certain it was January, 1940.

Q. And what was your position prior to that?

A. Well, prior to that I was only in charge of the offices east of Denver, and there was also one or two other accounts not included in my—

Q. Would you say that your authority and knowledge as to the operations of the sales department, as to these accounts east of Denver, with one exception or so which you have mentioned—

A. Would I say what? Repeat that.

Q. With the one exception or so which you have mentioned, was equivalent to your authority and knowledge since you became manager in complete charge of sales?

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A. I do not understand the question.
Trial Examiner Norwood: Read it.

By Mr. MacIntyre:

Q. Well, as to this period when you were in complete charge, prior to this date in 1940, that you have given,
1140 would you say that as to all of the sales operations of your company east of Denver, with the one exception that you mentioned, was that equivalent to what you now do as to all sales?

A. Yes, I would say that.

Q. And how long did that position—did you hold that position?

A. What position?

Q. The one in handling all the sales east of Denver?

A. Well, I still hold that.

Q. Well, I know, but for how long have you held it?

A. Since August 1, 1936.

Q. And what did you do prior to that?

A. Do you want me to start at the beginning?

Q. No, the period immediately prior to August, 1936.

A. Prior to that I was a sales agent in the New York territory.

Q. For the Triangle Company?

A. No, for the Steel & Tubes, Incorporated, of Cleveland.

Q. One of the Respondents here?

A. I do not know who the Respondents are.

Q. Well, who was your sales manager at that time?

A. At that time my sales manager was a gentleman named Whitfield.

1141 Q. Did you have a man in the organization by the name of Benfield?

A. Oh, I think he sold out on the Coast at that time. He worked for Steel & Tubes; he was not an agent.

Q. Were you under the jurisdiction of Mr. J. M. Barton at all at that time?

A. Not directly, no.

Q. Well, directly or indirectly?

A. Well, not indirectly, either.

Q. And how long did you hold your position as representative of Steel & Tubes, Inc.?

A. I am not quite clear on it, but I would say from about 1932 either '32 or '33, to August 1, 1936.

Q. Now, we have in evidence here, Mr. Hawks, Commis-

sion's Exhibit 57-A to Z-31, the price cards of the Triangle Conduit & Cable Co. Inc. I am asking you as to price card No. 76, Commission's Exhibit 57-U to X, and as to your price card No. 84, Commission's Exhibit 57 Z 28 to Z 31.

A. Would you mind taking the others away so I will know what you are talking about?

Q. Yes. Were those price cards prepared under your jurisdiction and supervision?

A. Yes, they were.

Q. Now, in those price cards there appears to be a figure of a basing point price Pittsburgh on both black
1142 enameled and the galvanized conduit. How did you arrive at the figures that were put in there as Pittsburgh basing point prices?

A. Are you talking about card 76 or card 84?

Q. Well, we will take 76; what is the exhibit number of it?

A. 57 U, is it?

Q. Is that it?

A. Well, card 76, is, as I recall it, one, either one of our distributors or one of our field offices sent in copies of a competitor's card which they had secured in the field. I looked over the card and decided that it would be to our company's best interests to follow that introduction of these prices by our competitor.

1143 Q. What led you to make that decision?

A. The fact that I thought it was to our company's best interest for us to follow the situation.

Q. Well, you have told us that. Now, what led you to believe that it would be to your company's best interest to do that?

A. Well, I always think that an advance in price is to my company's best interest.

Q. Well, when you issued card 76 there, do you think it would have been more or less to your company's best interest to have quoted prices as basing point prices one cent below those that appear on that price card rather than the ones that do appear on it?

A. Well, I never considered any deviations from the card from a standpoint of pennies up or down off any basing points.

Q. Why?

A. Well, the practice of the industry for 26 years has been to be quite fluent with what we call extra five per cents or two and a half per cents depending upon what it might be.

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Q. In other words, the price changes from one card to another on the basis of a basing point price have been two and a half per cent, five per cent and the like?

A. I don't understand.

Q. Or multiples thereof?

1144 A. I don't understand that question.

Q. I am just trying to find out what you meant by your answer when you said that you didn't figure in pennies but you figured in per cents of two and a half, five or thereabouts.

A. I didn't say that.

Q. Let us know what you did say, Mr. Hawks, as to what you meant.

A. Will you repeat the question?

Mr. MacIntyre: Read the original question that I stated to the witness about his decision of not quoting one cent below those prices when he put out card 76 instead of quoting those prices that appear in 76.

(The question was read.)

The Witness: I certainly would not. I want to be sure I understand the question. You are asking me why didn't I consider it to our company's interest, for instance, if a price on this card is $5.00 for the Triangle Company to publish a card of $4.99; is that what you mean?

By Mr. MacIntyre:

Q. Yes.

A. Well, it is the common practice in the industry on all products that for the sake of trade conversation to follow some lead of some competitor's published position because, for instance, in the case of card 76 if we were to come

1145 out with something different, there are jobbers in this country that handle two and three different makes of pipe and card 76 or any card is merely over a period of years something to cut the price from, with the exception of perhaps one or two instances over the period of years, but for the sake of lack of confusion or anything else we would follow the published lead of a substantial competitor, assuming that I thought it was to our best interest to do so.

Then just as soon as we found out that perhaps I might have been wrong insofar as maintaining that card is concerned, and on reports of competition from the field, I might authorize deviations.

Q. Well, now, you told us that you thought it would be to your company's best interest to follow the price lead of

one of your competitors in putting out a card. Why do you do that?

A. Because I think it is the right thing to do for our company.

Q. Well, why do you think it is the right thing for you to do that for your company?

A. Well, because if it is an advance in price, as it is in the case of card 76, I would be a very poor sales manager if I passed up an opportunity to make an effort to get more money for my company.

Q. Well, why was it—I come back to the question—
1146 why was it that you didn't make an increase in price up to within one cent of what your competitors did and still shave it by that much at the time you put out card 76?

A. Because it happened that our competitors card was card 76, was numbered card 76, and for the sake of understanding with our distributors that our basic card was the same as this competitors, I would make our card the same as the card they published.

Then when a customer would report to us that the price was cut two and a half per cent, I would perhaps ask two and a half per cent from what they would say on card 76, and I would know what they were talking about.

Q. In other words, in order that the record may be clear as to whether our understanding of your answer is correct, may I ask this question as to whether you believe that the jobber can understand the price, say, of $5.00 better than he could the price of $4.99?

A. No, but he would understand the statement on card 76 without going into all the many sizes and everything else to see what sizes we cut off of or added a penny on to.

Q. Well, if you had used card number 76 just as your competitors had, but had shaved the price one cent all the way down the line on each item, you don't think that your customers could have understood that; is that correct?

A. Well, I couldn't answer for my customer's in-
1147 terpretation of something that I didn't do.

Q. Well, why didn't you do that?

A. Because I didn't think it was to my company's best interest to do it.

Q. In other words, you feel that it was to your company's best interest to quote exactly what your competitors quoted rather than one cent below them?

A. To publish exactly?

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Q. Yes, that is what I mean.

A. Yes.

Q. Well, that is what you were doing when you published these cards, you are quoting prices, aren't you?

A. I wouldn't say that.

Q. What are those price cards if they are not price quotations?

A. Well, as far as the conduit industry is concerned, they have just been a basis to cut the price from.

Q. I am not talking about what they are to be used for, but I am asking you what they are. What are those price cards?

A. They are published price position but they are not the end of our price position.

Trial Examiner Norwood: You use that for a standard; is that right?

1148 The Witness: Well, it is a step.

Trial Examiner Norwood: It is a measuring stick?

The Witness: It is a yard stick. For instance, if from that step we can step up a step, it is my job to do it.

Trial Examiner Norwood: If you step down, you do it by percentages; is that right?

The Witness: That is right.

By Mr. MacIntyre:

Q. Well, in order that the record may be clear, I will ask you this question, Mr. Hawks: Is it your testimony here that you issued such price cards but you never charge the prices quoted thereon?

A. Well, I would say in 26 years in the industry with complete acquaintance with conduit cards that the occasions have been very rare when anybody in their sane mind that knew anything about the conduit industry would take the card as the lowest price they could purchase at.

Q. And would you have that answer to apply to sales and shipments you made during the period of time that card 76 of your company, which is in evidence here as Commission's Exhibit 57-U was in effect?

Mr. MacIntyre: Read that question and see if it is complete.

(The question was read.)

1149 The Witness: On all sales and shipments?

By Mr. MacIntyre:

Q. I go back to the answer that you made to which this last question of mine applied.

Trial Examiner Norwood: Read his last answer.

(The answer was read.)

The Witness: Well, I thought that the original question had to do with quotations, now you are talking about closed transactions, as I interpret your question.

By Mr. MacIntyre:

Q. That is because your answer was to the effect that you didn't make closed transactions on your card. Now, I am asking you if your answer to the effect that you do not make closed transactions on the card applies to the period of time during which card 76 was in effect?

Mr. Stewart: I object to the form of the question because that isn't what the answer said, what the witness answered. There is no discussion about closed transactions, I understood, at all.

Trial Examiner Norwood: Read the question.

(The question was read.)

Mr. MacIntyre: The witness brought that into the question. I didn't.

Mr. Stewart: You are assuming it.

Trial Examiner Norwood: Did you finish your 1150 question? Does that complete the question?

Mr. MacIntyre: Yes, that completed the question.

Trial Examiner Norwood: The objection is overruled. Answer the question.

The Witness: Will you repeat the question?

Trial Examiner Norwood: Read the question.

(The question was read.)

The Witness: Not entirely.

By Mr. MacIntyre:

Q. All right, explain that answer, Mr. Hawks.

A. Well, our quotations at any time are governed by the competitive situation.

Q. Well, why then doesn't the answer that you have been giving us about the cards just being a measuring stick apply to the period of time in which card 76 was in effect?

A. Well, that is a different thing. The cards have always been the measuring sticks.

Q. Well, what about the period of time during which card 76 was in effect? Does that answer of yours about 26 years in the industry apply to that period as well?

A. It applies to any period.

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Q. Including the period of time during which card 76 was in effect?

A. That is correct. The conduit card has always been a measuring stick.

1151 Q. During the period of time during which card 76 was in effect, you attempted to get what that card called for, didn't you?

A. Yes, sir.

Q. And you did in a substantial number of cases get what that card called for, didn't you?

1152 A. Well, I haven't got any definite recollection at the time of just what our percentage of success was, but we did make some sales on the basis of card 76, where competitive conditions in the locality would permit it.

Q. And they did permit it, didn't they?

A. In some instances.

Q. And you don't know what percentage of instances at this time, do you?

A. No, I wouldn't know that now.

Q. What applies to card 76 applies to other cards in that group that is in evidence here as your cards from 74 to 84; is that true?

A. Well, I know nothing about Triangle's cards, I don't think, except those cards that were either published or in effect starting with August 1, 1936.

Q. That carries you back to card 74, Commission's Exhibit 53-M. Now, answer the question that I asked you with respect to the card subsequent to that and including it.

A. What question is that?

Mr. MacIntyre: Read the pending question, please.

(Pending question read.)

By Mr. MacIntyre:

1153 Q. I will restate it. I will ask you again, Mr. Hawks, that as to the answers you have given us this morning concerning card 76 of your company, Commission's Exhibit 57-U, they would apply with equal force as to other cards running from 74 to 84, as issued by your company, during the period from November, 1936 to January, 1941; is that correct?

Mr. Stewart: Just a moment. I object to that on the ground it is too vague and indefinite to permit either counsel for the Respondents to know what it means, or to permit the witness to answer. If, by the question, counsel

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means as to whether the witness means that the general statement which he made in answer to the inquiry of the Examiner, that the card was simply a yardstick applied to those other cards, I have no objection, but to ask the witness as to whether the answers to card 76 apply to all the cards, I submit is not only unfair, because I don't know what answer he means.

Trial Examiner Norwood: Was it clear to you, Mr. Witness, as to what answer counsel meant?

The Witness: As I understood, the way the last question was put, I am asked whether or not my statement that card 76 was a measuring stick, would apply to card 74 and 75, and my answer would be "Yes," that it did.

1154 Trial Examiner Norwood: Well, would your answer, with respect to making a number of sales at the prices named on the card, be the same with respect to all the cards that counsel has mentioned there?

The Witness: Well, I think the best way of answering that would be to say that our sales, depending upon competitive conditions, would govern the percentage of whether they were made on or off the card.

By Mr. MacIntyre:

Q. But some of them were made on the card as to each of those cards; isn't that true, Mr. Hawks?

A. Well, I wouldn't know definitely about that. I would think so.

Q. And as to a substantial number, as to some of the cards, isn't that true?

A. I would not say so. I would say very definitely no. That is, as far as the substantial number is concerned.

Q. Is it your testimony here today, Mr. Hawks, that a substantial number of the sales that you are making pursuant to card 84, are not being made on card 84, but at something less than card 84?

The Witness: Well, I would have to have that question. Pursuant to 84? Pardon my ignorance, but does that mean before card 84 or since its introduction.

By Mr. MacIntyre:

1155 Q. Since it was issued?

A. A major percentage of our sales, since the introduction of 84, has been at the card, but we have had one or two instances where competitive conditions compelled a deviation.

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By Mr. MacIntyre:

Q. In connection with your calculation of delivered price quotations, you have used certain freight rate schedules, freight rate booklets. Will you tell us the source of those, Mr. Hawks?

A. Well, as far as I know, and to my best knowledge and recollection, since I have been with the Triangle Company, I don't think it has been necessary to replenish the supply of the adder book, what we call the adder book, but as far as freight rates are concerned, that is, with
1156 the fluctuation and changes, I believe that we have secured those from the Donley Company.

Q. Mr. Charles Donley?

A. I believe so. That routine was established before I was with the company, but I am quite certain that is where they come from.

Q. That is, the freight rate books, themselves. Now, when you spoke about adder books, you meant delivery charge books, so-called?

A. Well, I don't know what you would call them.

Q. I am showing you Commission's 73-B. That is what you were referring to as that type of book, isn't it?

A. Yes.

Q. That is commonly known in the industry among you men and your competitors, as an adder book, isn't it?

A. Well, I don't know how my competitors refer to it, but I have always called it an adder book.

Q. What other source than Charles Donley have you used for freight rate information?

A. The railroads.

Q. How frequently do you confer with the railroads for freight rates?

A. Well, as often as the occasion demands. Lots of times you have a destination that is not in the supplement that Donley would send out, and we would call the
1157 railroad and get the rate from them.

Q. But as to the rates shown in the Donley booklets, from some place to a particular destination, that is shown?

A. We have always favored that service, yes. In fact, I never knew of any other service that was available.

Q. And those rates in the Donley booklets of your company, which are in evidence here admitted by your counsel,

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are shown to be from two locations, a "P" for one and a "C" in the other.

What do those locations mean to you?

A. They would mean to me one to be Pittsburgh and the other Chicago.

Q. And only from those places to the destinations shown opposite the freight rate; is that correct?

A. I would say so.

Q. Why do you use any rates shown in such booklets opposite the letter "C" as rates applying from Chicago to any destination?

A. Well, it simplifies my problem, in that I know what the yardstick will be on those points marked with a "C".

Q. That is, as yardsticks used by you, compel your competitors; is that correct?

A. I don't know what our competitors do, just the 1158 Triangle Company.

Q. Mr. Hawks, is it your testimony here this morning that you do not know that your competitors issue price cards such as your 74 to 84?

A. No, that is not my testimony. I know that they do.

Q. And that they carry the same basing point pricing factors in them; is that correct?

A. I don't know what you mean by "factors," but they carry the same base prices, is my commercial interpretation of it, and that is what I meant by "base price."

Q. And carry the same explanation as to the method for figuring a delivered price quotation, priced on such basing point price; is that correct?

A. I believe they do.

Q. And you have known that to be the case when you have issued your price books and price cards?

A. Yes, I have.

Q. You have attended meetings of the Rigid Steel Conduit Association as a representative of your company, during the period of time that it had membership in that Association, have you not, Mr. Hawks?

A. Yes, sir.

Mr. MacIntyre: I believe that is all.

Trial Examiner Norwood: Examine him.

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1159 *Cross-Examination by Mr. Stewart.*

Q. Mr. Hawks, I gather from your testimony, that your company doesn't maintain a traffic department of its own?

A. Oh, no.

Q. And that is the reason you use the Donley service?

A. Why, of course.

Q. And, to your knowledge, has your company ever knowingly used a wrong freight rate?

A. Not knowingly, no.

Mr. Stewart: That is all.

Trial Examiner Norwood: Any further cross-examination?

Mr. Robison: I have one question.

By Mr. Robison:

Q. When you were asked about card 84 in the extent of adherence to prices figured in card 84, I got the impression from your answer that the adherence to such prices had been somewhat less under card 84, than under some previous cards. Is there any reason for that?

A. Why, I am sorry if I gave that impression. I would say that the adherence to card 84 has been more firm, because of the demand being so far in excess of production, but there has been deviations from card 84.

Q. Approximately when did card 84 come out?

1160 Your company's card 84.

A. I would have to look at the card, the card which Mr. MacIntyre has.

Mr. MacIntyre: You are now looking at Commission's Exhibit 57 Z 28?

The Witness: January 10, 1941.

Mr. Robison: That is all I have.

By Mr. Stewart:

Q. Mr. Hawks, if you remember—if you don't, say so, do you remember the general business conditions in March, 1937, when card 76 came out?

Mr. MacIntyre: May I have that question, please?

Mr. Stewart: I am asking if he remembers the general business conditions in March, 1937, when card 76 came out.

A. My recollection of conditions at that time is that the industry, thanks to an increased demand, was just recover-

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ing from a demoralized condition because of absence of demand.

By Mr. Stewart:

Q. Let me ask you this: do you recall whether at or near the time card 76 came out—I don't know the date of yours, but according to my records card 76 came out on March 9, 1937—will you be good enough to see yours
1161 and see when you published yours?

(Card handed to the witness.)

A. March 9th.

Q. Now, do you recall what occurred with reference to an increase, if any, in the price of pipe at that time?

A. What occurred?

Q. Yes. Was there, if you remember, a rise in the price of pipe at that time, at the time your card 76 came out?

A. Why, yes. I received from either one of our field offices or customers a copy of a price advance by a competitor.

Q. I don't believe you got my question. I am talking about raw pipe.

A. Oh, raw pipe? I wouldn't know anything about that. That is handled by our purchasing department.

Q. Then you just don't remember?

A. Well, I don't have any recollection of that.

Mr. Stewart: That is all.

Redirect Examination by Mr. MacIntyre.

Q. On that question as to card 76, I understood you—and I want you to tell me whether I correctly understood you—to say that you issued it with your prices as shown thereon, Commission's Exhibit 57-U, because your
1162 competitors had issued that and you didn't know how the prices were made up?

A. I wouldn't know how they arrived at the price.

Q. You used the price shown thereon because they had used it?

A. Because they had used it, and because it was an advance that was badly needed.

Q. Mr. Stewart asked you if you maintained a traffic department.

A. I didn't hear you, Mr. MacIntyre.

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Q. Mr. Stewart asked you on cross-examination if your company maintained a traffic department.

A. No, we don't.

Q. Is there any use to which you can put these cards, your price card 84, Commission's Exhibit 57 Z 28 to Z 31, and in that connection your freight rate bulletins which are in evidence here, Commission's Exhibit 75, in connection with shipment of your goods?

Mr. Stewart: I didn't get the question. What was the question?

Trial Examiner Norwood: Read the question.

(Question read.)

Mr. Stewart: That is meaningless, and I object on the ground that the question—

Trial Examiner Norwood: I think counsel should 1163 restate the question.

Mr. MacIntyre: I will try to make it a little shorter.

By Mr. MacIntyre:

Q. As to your freight rate bulletins in evidence here, Commission's Exhibit 75, do you use those, Mr. Hawks, in any other connection than the figuring of delivered price quotations?

A. You are talking of the bulletins with the freight rates in?

Q. Yes.

A. Yes, we use them on another product that we make.

Q. Well, I am talking about Rigid Steel conduit now. Do you, in connection with Rigid Steel conduit, use them in any other way than in calculating delivered price quotations?

A. No.

Mr. MacIntyre: That is all.

Mr. Stewart: Just a moment.

Recross Examination by Mr. Stewart.

Q. Do you, or have you in your company, at any time quoted FOB mill to any customer?

A. Oh, yes.

Mr. Stewart: That is all.

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1164 *Redirect Examination by Mr. MacIntyre.*

Q. Do you generally quote FOB mill, Mr. Hawks?

A. Well, that all depends on the source of the inquiry, the basis of the inquiry, who is asking the price.

Q. Well, isn't it a fact that you generally quote along the lines of this method which is shown by your price cards and the freight adder books and the freight rate bulletins?

A. That depends on the request.

Q. I am asking you about what you generally do?

A. Well, we don't run true to form. I would not say we generally do anything. We are selling the railroads, for instance, every day.

Trial Examiner Norwood: What percentage of your shipments are flat FOB mill?

The Witness: I would say a small percentage.

Trial Examiner Norwood: How small, about how small?

The Witness: That would be hard for me to say without my figures.

By Mr. MacIntyre:

Q. Can you give us an answer to that?

A. I could not without my figures.

1165 Q. Would it be one per cent or five per cent?

A. I would not venture a guess on it without my figure.

Q. Have you ever issued a price card quoting openly, that is to the world, so it would come to the attention of your competitors an f.o.b. mill price without reference to any basing point price?

A. Well, the base price is the f.o.b. mill price, the price that we published.

Q. Do you have a mill at Chicago?

A. No, not at Chicago.

Q. Do you have a mill in Pittsburgh?

A. No, we have one at Moundsville, West Virginia.

Q. And how far is that from Pittsburgh?

A. That is in the switching area of Pittsburgh and the rate from Moundsville is the same.

Q. To Wheeling?

A. I beg your pardon?

Q. Is the rate the same to Wheeling from Moundsville as from Pittsburgh.

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A. I would say as far as my knowledge of the rate is concerned that, for instance, the rate from Moundsville to New York is the same as it is from Pittsburgh to New York.

Q. I am asking you about Wheeling, West Virginia, now, Mr. Hawks.

1166 Mr. Stewart: I submit that this is not redirect. I submit also that the witness is not supposed to be a traffic expert on rates.

Trial Examiner Norwood: Well, I think your question about selling f.o.b. mills—

Mr. Stewart (Interrupting): Will you please let me state my version of it, because, Mr. MacIntyre, you are not fooling me one bit as to what you are trying to get this man to say. All I asked the witness was as to whether or not if a customer requested they would sell f.o.b. mill, and he said "Yes", but that doesn't give Mr. MacIntyre the right to go into the history of the freight rates.

Trial Examiner Norwood: Well, I think that he can find out the character of this and the extent of this f.o.b. mill selling.

Mr. Stewart: Yes, but I submit what does that have to do with the question of whether the freight rate from Wheeling is the same as from New York to Moundsville?

Trial Examiner Norwood: I think there is some connection there. The objection is overruled. Answer the question.

1167 By Mr. MacIntyre:

Q. I will ask it again:

Mr. Hawks, is it your testimony here this morning that freight rates are the same from Moundsville as they are from Pittsburgh to Wheeling, West Virginia?

A. I do not know anything about the freight rates from Moundsville to Wheeling.

Q. But you are certain that they are the same to New York as they are from Pittsburgh?

A. Not quite certain that—it may vary a penny either way. I am not positive on that.

Q. Now, you are certain, you say, as to the rate from Moundsville to New York, but you are not certain of any rate from your mill to its nearby town of Wheeling?

A. I believe—I do not have anything to do with freight rates, or anything of that nature, which is the reason why

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I cannot answer you, emphasizing complete accuracy. It is my understanding from my knowledge of freight rates today, that the rate from Moundsville, our plant is approximately the same as it is from Pittsburgh.

Q. But you do not know whether they are exactly the same?

A. I could not swear to that, no.

Q. And if they should be found to be exactly the same, would you say that they were made the same upon application to the railroads and to the Interstate Commerce
1168 Commission by manufacturers of rigid steel conduit such as the Youngstown Sheet & Tube Company, Republic Steel Corporation, and others similarly interested?

Mr. Stewart: Now, I object. This witness, in the face of—

Trial Examiner Norwood: Well, if he knows that.

Mr. Stewart: How in the world could he possibly know that? I object to that.

Trial Examiner Norwood: I will ask him to answer that of his own knowledge, if he can.

The Witness: I cannot answer it for any company but our own.

Trial Examiner Norwood: Well, what is the situation with respect to your own company there, did they ask for the rates to be made the same?

The Witness: Did we ask for the rates to be made the same?

Trial Examiner Norwood: Yes.

The Witness: I would not know that.

Mr. MacIntyre: That is all.

Mr. Stewart: That is all.

(Witness excused.)

1169 What is your pleasure? Have you another witness?

Mr. MacIntyre: Yes. I would like to adjourn until two o'clock.

The witness will be here at two. That is the one we were thinking would be here tomorrow morning.

Trial Examiner Norwood: We will recess until two o'clock p. m.

(Whereupon, at 12:40 p. m., a recess was taken until 2:00 p. m.)

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1170 **Afternoon Session—2:00 P. M.**

Trial Examiner Norwood: The hearing will come to order. You may call your next witness.

Mr. MacIntyre: I call as the next witness for the Commission Mr. George L. Hatheway.

GEORGE L. HATHEWAY was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

Q. Will you state your name?

A. George L. Hatheway.

Q. Mr. Hatheway, will you please state what your business and occupation is?

A. I just don't quite follow that question, Mr. MacIntyre.

Trial Examiner Norwood: Read it.

(The question was read.)

The Witness: I am a partner in the Clifton Conduit Company. We handle conduit and other electrical supplies which we sell to distributors.

By Mr. MacIntyre:

Q. Who are the other partners in that partnership?

A. Members of my family.

1171 Q. That is those members who are named as Respondents in this case?

A. Yes, sir.

Q. How long have you been engaged in the business of selling and handling rigid steel conduit?

A. Approximately as—Clifton Conduit?

Q. Clifton Conduit, yes.

A. About 14 or 15 years.

Q. At the same location?

A. No, different locations.

Q. Well, how long have you been handling it from the present location at 75 Montgomery Street, Jersey City, New Jersey?

A. I believe it was December, 1939.

Q. And where did you handle it previous to that?

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A. 220 Church Street, New York.
Q. And for how long?
A. I believe five years.
Q. That began about 1934?
A. Approximately.
Q. Now, you have said that you handled rigid steel conduit. Will you please explain to us what you mean by that term "handle"?
A. I sell it.
Q. You sell it to whom?
1172 A. To distributors.
Q. That is electrical wholesalers?
A. We call them, yes, electrical wholesalers.
Q. Wholesalers of electrical supplies?
A. Yes.
Q. What are the limits of the territory over which you solicit and sell such conduit?
A. The entire United States.
Q. That is, you ship it to all points in the country?
A. Not all points. I want to make—I don't quite understand you.
Q. Well, what are the limits of the territory in which you do solicit business and ship conduit?
A. I can sell conduit throughout the United States if I am successful in obtaining distributors.
Q. Well, tell us how successful you have been; what are the limits of the territory over which you do distribute it?
A. I don't want to—I just don't quite understand. We have distributors in a number of states, but not in all states.
Q. Well, just name those few in which you do not have distributors, and then we will try to figure if we can get at it that way.
1173 A. Well, I would say Vermont, New Hampshire, Rhode Island, I have to go east and west. Ohio, Mississippi, Arkansas, Oklahoma, Arizona, New Mexico.
Q. Now, do we understand correctly that you sell and ship conduit into all of the other states than those you have named?
A. That is correct.
Q. Will you tell us why you do not sell and ship it to those states you have named?
A. Because whatever salesmen we have selling for us

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in those states have not been successful in obtaining any distribution for us.

Q. Have you withdrawn entirely from those states?

A. I have not withdrawn.

Q. Now, from what point do you ship this conduit to the customers in the states in which you sell and ship?

A. Kensington, Pennsylvania.

Q. Do you manufacture the conduit there?

A. No, sir.

Q. How does it come into your possession at Kensington, so that you may ship it from there?

A. It is purchased by me on terms that I have made with the General Electric Company.

Q. That is, the General Electric Company manufactures the conduit and sells it to you, is that correct?

A. They manufacture conduit which carries my
1174 name for me.

Q. Your brand name?

A. My brand name.

Q. Is there any difference in the way the black enameled product General Electric sells you with your brand name on it from the conduit that it manufactures, black enameled, and sells with its name on it to your knowledge?

A. I would not know on that.

Q. Well, is it your understanding that it is the same?

A. It has to pass the same underwriters test.

Q. What is the arrangement that you have with the General Electric pursuant to which you purchase this conduit from it?

A. Do you mean—

Trial Examiner Norwood: Read the question.

(The question was read.)

The Witness: Do you mean the details of my arrangement?

By Mr. MacIntyre:

Q. Well, the nature of it we want to know.

A. Well—oh, I think I understand now. I buy it from them at their distributor's price less a certain discount that they give me.

Q. That is, you secure from General Electric an additional discount?

A. That is correct.

1175 Q. That distributors who buy from them generally do not get, is that correct?

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A. I cannot answer that.

Q. Well, do you secure a discount from General Electric's published price quotation in addition to the discount which they publish as available to other distributors, is that correct?

A. I get a discount from their published price sheets. I cannot answer beyond that.

Q. In addition to the discounts that are shown on their published price sheets?

A. That is correct.

Trial Examiner Norwood: Is your discount below what other distributors get?

The Witness: Well, I am not a distributor.

Trial Examiner Norwood: No. They make your brand.

The Witness: They make my brand.

Trial Examiner Norwood: I see.

1176 By Mr. MacIntyre:

Q. Pursuant to your arrangement with the General Electric Company, you secure all of the conduit that you find necessary to fill your needs for resales; is that correct?

A. At the present time?

Q. Well, up to the time this complaint was issued last January.

A. Yes.

Q. In your resale of this conduit, Mr. Hatheway, do you publish price cards or price sheets carrying price quotations to your customers?

A. That is correct.

Q. And how frequently do you publish those?

A. Whenever my cost is raised by my supplier, then I raise my selling price to my distributors.

Q. Are we correct in understanding, then, that you issue price sheets changing prices each time General Electric issues its price sheets, changing its prices to its distributors?

A. Approximately.

Q. And are the amounts by which your prices change the same amounts by which General Electric changes its price quotations?

A. Yes.

1177 Q. We have in evidence here, Mr. Hatheway, Commission's Exhibit 70-I to L, inclusive, price cards of the Clifton Conduit Company.

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Can you tell us whether or not your company issued any price lists in addition to those, during the period of time covered by those price cards?

A. Before that or after that?

Q. During the period covered by those.

Mr. Byrne: This started with 69, in 1933, and your partnership started in '37; just keep that in mind.

The Witness: I don't get that point at all.

Mr. MacIntyre: Read the question.

(Question read.)

By Mr. MacIntyre:

Q. That is, between 1933 and 1941.

A. The Clifton Conduit Company have issued price sheets since the date of these cards here.

Q. That is, since the date of the last one, March 10, 1937, card 75?

A. The Clifton Conduit Company issued cards since then.

Q. And what are the numbers of the cards that have been issued since then?

A. That I could not tell without the records.

Q. And did it issue some between cards 70 and 1178 74, which are in evidence here?

A. I believe there was a 72 card; I am not sure on that.

Q. Will you submit to his Honor, for inclusion in evidence here, your cards 73 and all of the cards that your company has issued since this one marked 75, dated March 10, 1937, in evidence here as Commission's Exhibit 70-I to L?

Mr. Byrne: So far as they are available, the company's records will all be produced.

I don't know whether we have any or not.

I have had a search made and we haven't found any except very recent ones.

By Mr. MacIntyre:

Q. Well, the recent one is card 84, I believe. You are still using that, are you, Mr. Hatheway?

A. Card 84? Our general policy is to destroy these old cards so they won't go out.

Q. We want the record clear that the cards that are in evidence are not the only cards that you have issued, and I believe you have made that clear for us. We would

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like for you to submit any of the others, that I have requested, that you have available. Mr. Hatheway, referring again to this price card of yours, 75, dated March 10, 1937, Commission's Exhibit 70-I to 70-L, inclu-
1179 sive, will you please tell us why you selected the basing point prices that appear in there as and for inclusion in there as price quotations?

A. Because my costs were based on these sheets.

Q. How did you make the change between that card and the preceding card by the amount that the change was made?

A. I am not very familiar with these things. When we receive a new cost from the General Electric Company, we immediately, or as soon thereafter as possible, change our prices to conform to the new costs, whether they were up or down.

Trial Examiner Norwood: You did that without regard to any prices in the field?

The Witness: Yes, your Honor, because our costs were based on what our arrangement was with the General Electric Company.

Trial Examiner Norwood: Well, were you a price leader?

The Witness: I beg your pardon?

Trial Examiner Norwood: Did that make you a price leader in your field?

The Witness: No, your Honor, far from it.

By Mr. MacIntyre:

Q. Mr. Hatheway, did you tell an investigator of the Federal Trade Commission during 1940 that the
1180 prices that you include in your price cards are controlled entirely by the published prices of the General Electric Company?

A. That would be true. Let me get this straight. The prices that they quote us are prices which we have to buy and which we necessarily sell at.

Q. Didn't you tell an investigator of the Federal Trade Commission that those that you quote on your price sheets are controlled entirely by the published prices of the General Electric Company?

A. I don't follow that question clearly.

Trial Examiner Norwood: Read the question.

(Question read.)

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The Witness: Could I ask a question, your Honor, to make sure I understand it?

Trial Examiner Norwood: Yes.

The Witness: Does that mean that I am reputed to have said that the prices I quote to my distributors are the prices that General Electric tell me to quote?

Mr. MacIntyre: No, I don't think I asked a question like that.

The Witness: Does it mean that I told the investigator that we quote to the trade the same prices as the General Electric show on their sheets?

Mr. MacIntyre: That was the understanding that I was attempting to ask you.

1181 The Witness: Well, that is correct.

By Mr. MacIntyre:

Q. So, are we then to correctly understand that each time General Electric Company issues a price sheet of its own, that you issue one which matches it, so to speak, in the amount of the price change?

A. That is correct, because my costs are based on what the General Electric Company sells to their distributors at.

Q. You are acquainted, are you, Mr. Hatheway, with the fact that others who manufacture and sell Rigid Steel conduit, issue price sheets such as those of the General Electric Company, at about the same time the General Electric Company issues them?

A. I could not agree to that.

Q. Is it your testimony that such information does not come to you from your contact with the industry?

A. We sometimes, but not regularly, have received price sheets from other distributors, but it wouldn't make any difference to us what price any other manufacturer quoted. The only thing we give any recognition to at all is our cost from General Electric.

Q. Well, I am not asking you now whether you pay any attention to the others; I am asking you now if it is the fact that you have knowledge that the others are

1182 issuing theirs?

A. We do not have that knowledge as a general point of information, except that we pick it up from our salesmen.

Q. Well, you secure it that way, though?

A. Naturally.

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Q. And you do have knowledge, then, based on that source of knowledge, as to what your competitors are doing in the issuing of prices?

A. We would not know what the price was except one of our salesmen calls on a friendly distributor. He might say, "National just advanced their price," or lowered it five per cent, or somebody else.

Q. But through that information you become acquainted with the price changes, the time of the price changes, and the amount of them; is that correct?

A. Not the time and only approximately the amount until we could get a discount sheet in our hands.

Trial Examiner Norwood: Don't the salesmen ever send you these price particulars of other concerns which they have fixed up in the field?

The Witness: Yes, your Honor.

Trial Examiner Norwood: Containing the dates and the full information?

The Witness: Yes, your Honor.

1183 By Mr. MacIntyre:

Q. They are under instructions of yours to do that at every opportunity.

A. I have to be competitive, naturally, and I want to know what my competitors are doing.

Q. And your salesmen follow your instructions in that respect; is that correct?

A. They had better.

Q. Well, do they?

A. Not all.

Q. Well, as a general rule?

A. As a general rule, they do, naturally.

Q. Now, you used the word "competitive" Mr. Hatheway. What do you mean by that?

A. Well, a piece of Clifton pipe can't very well be sold at a higher price than a standard manufacturer will sell his products for.

Q. Well, is that all that you mean by the word "competitive"?

A. Well, it would seem to me that we have to keep our prices competitive with our competition, in order to sell.

Q. Does that mean that you keep them no higher and no lower?

A. Well, I don't know if I ever could get a higher price. Occasionally I have gotten a higher price.

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1184 Trial Examiner Norwood: Answer his question. Read the question.

(Question read.)

A. I think it is a little bit confusing.

Trial Examiner Norwood: Is that what is meant by being competitive?

The Witness: That is what I would have to do.

By Mr. MacIntyre:

Q. You find that you are successful to a substantial degree in your aims and efforts, Mr. Hatheway, do you?

A. By and large, fairly so.

Q. Well, now, referring to card 84, which was issued during January, 1941, you are substantially successful in your aims, are you?

A. I would say yes right at the present time because we are in a sellers' market.

Q. And that has been true since about the time that you issued card 84, January, 1941?

A. I don't know just when card 84 was issued.

1185 By Mr. MacIntyre:

Q. January 10th to the 16th, 1941.

Mr. Stewart: Are you testifying or is that on the record?

Mr. MacIntyre: He said he did not know. I am calling that to his attention as a period of time to see if it will help his memory.

Mr. Stewart: I was wondering whether you were testifying.

The Witness: No, that was only reasonably so back in January.

By Mr. MacIntyre:

A. Now, referring again to your price cards that are in evidence here, particularly to number 75, which is Commission's Exhibit 70-I to L, you have specified in there certain basing point prices. Referring to Commission's Exhibit 70-J, you have there listed what you call Pittsburgh base, and then on Commission's Exhibit 70-K you have listed some prices under what you term Chicago base. Explain to us what you mean by those Chicago base prices you have listed them there, Mr. Hatheway.

A. It is pretty hard for me to explain this because I

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never understood it, but my general knowledge is that the Pittsburgh price is the point of origin.

Q. What about the Chicago price?

1186 A. Well, the Chicago price, I assume we have to be competitive with Chicago to sell against the Chicago factory.

Q. Well, in doing so you have selected a basing point price which is known as a Chicago price. How do you use that in making your quotations to your customers?

A. A Chicago customer?

Q. Well, in Alton, Illinois, say.

A. My understanding is that if the Chicago base is nearer to the,—where the customer wants it we use the Chicago base.

Q. Why do you do that?

A. To be competitive.

Q. And in using the Chicago base you add a freight rate factor from Chicago to that destination so as to make a delivered price quotation?

A. Yes, yes, I would say that, yes.

Q. How do you arrive at the delivered price quotation that you make in New Kensington, Pennsylvania?

A. Quote a Pittsburgh price.

Q. Plus what?

A. I do not know if there is any differential for Pittsburgh.

Q. Is it your testimony here that there is no freight rate applying between Pittsburgh and New Kensington?

A. Mr. MacIntyre, I have not prepared a quota-

1187 tion in five years but I am perfectly willing to check up. I really can't answer that one way or the other. I have not prepared a quotation in five years.

Q. Who in your organization prepares the price quotations?

A. We have several clerks there.

Q. Under your direction?

A. They work for me.

Q. Who is the General Manager of your business?

A. Well, I am the General Manager.

Q. Who is the sales manager?

A. I am the sales manager.

Q. Well, isn't it a fact, Mr. Hatheway, that you simply tell your clerks to take the General Electric cards and to follow those in putting yours out?

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A. That I would say, yes, we do that because that is our cost.

Q. And that is true as to freight adder books or delivery charge booklets, and freight rate schedules that are used in connection with your price cards in figuring delivered price quotations, isn't it?

A. Yes, sir.

Mr. MacIntyre: That is all.

Cross-Examination by Mr. Stewart.

Q. Mr. Hatheway, you don't mean that you follow
1188 the General Electric adder books or freight rate sheets; you follow your own, don't you?

A. Well, I follow mine but I copy them from the General Electric.

Q. Now, let me ask you, you spoke about a seller's market. How long prior to 1941 had you had a seller's market?

A. A very short time. They only come around at the cycles.

Q. And do you recall what the general experience in the rigid steel conduit industry has been with reference to selling off the card? Has it been general over your period of experience?

A. There has not been a firm, a really what I call a firm market on conduit in years.

Mr. Stewart: That is all.

Redirect Examination by Mr. MacIntyre.

Q. Mr. Hatheway, what is your recollection as to your card 76 and your sales at prices during the period of time that card 76 was in effect?

Mr. Stewart: Well, I suppose that he remembers the period. You might tell him what the date was. I do not imagine the man carries that in his head. It was March 19, 1937, I think—March 9, not the 19th.

(Addressing the witness.) Wait a minute, please.
1189 You are answering Mr. MacIntyre.

Trial Examiner Norwood: Wait until he furnishes that information.

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By Mr. MacIntyre:

Q. I am talking about that period between March 15, 1937, and July 1, 1938.

A. The market was rather unsettled in that time.

Q. Do you think that the market during that period of time was somewhat similar to this market that you have described as, that is, in terms of its general conditions up to the time that you issued card 84 when this seller's market started this year, is that true?

A. I would say the seller's market started back in the latter part of 1940, but all—

Q. But that is—

Mr. Stewart: Wait a minute. Let him finish the answer.

The Witness: But all through that period the conduit market was decidedly wobbly.

By Mr. MacIntyre:

Q. That is up to that time?

Mr. Stewart: No, no.

The Witness: After that time.

By Mr. MacIntyre:

Q. That is after 1940?

A. After 1940.

1190 Q. How was it prior to 1940?

A. Terrible.

Q. And it was terrible all the time prior to 1940, is that correct?

A. I would honestly say in the past seven years conduit, the conduit market has been a joke.

Mr. Stewart: What? I did not catch that.

The Witness: A joke.

Trial Examiner Norwood: What did you say there, a joke?

The Witness: A joke.

Mr. Stewart: The conduit market has been a joke.

By Mr. MacIntyre:

Q. And that would apply to any of them, is that correct?

A. Except myself.

Mr. Stewart: I did not catch what you said.

The Witness: Except myself.

By Mr. MacIntyre:

Q. In other words, you observed them, but others did not?

A. I do not know whose feelings I hurt, but that is true.

Mr. MacIntyre: That is all.

Mr. Stewart: That is all.

1197 Let the record show that the hearing is now adjourned until Monday, October 20, 1941, at 10 o'clock a. m. Eastern Standard Time, in Pittsburgh, Pennsylvania.

(Thereupon at 2:50 o'clock p. m. October 2, 1941, the hearing in the above-entitled matter was adjourned.)

1200 PROCEEDINGS.

Trial Examiner Norwood: The hearing will come to order pursuant to adjournment from New York on the 2nd day of October; the hearing in Docket 4452, Rigid Steel Conduit Association, et al., being reconvened in Court room No. 4 of the Post Office Building, Pittsburgh, Pennsylvania, at 10 o'clock A. M., on October 20, 1941.

Notices have been posted in the custodian's office as to the convening.

Off the record.

(Discussion had off the record.)

Trial Examiner Norwood: On the record.

Proceed.

Mr. MacIntyre: Your Honor, before calling any witnesses this morning, I would like to make reference to the exhibits, Commission's No. 79 series. As you will recall, those exhibits were marked, for identification, on page 173, offered on page 439, and the ruling as to their reception in evidence on page 440.

I do not believe, as the record now stands, that the offer as shown by the record of the ruling receiving the same in evidence, as shown on page 440, is sufficiently clear as to what I intended in the offer. So at this time I want to renew that offer and make it more clear, if that is possible. So I offer in evidence—I want this

1201 to go back to the time that it shows my offer on page 439, that this is what was offered at that time, even though the record doesn't show it to be: 79-Z-23 to Z-34, inclusive; 79-Z-67 to 79-Z-70, inclusive; 79-Z-71 to 79-Z-74, inclusive.

Trial Examiner Norwood: 71 to 74?

Mr. MacIntyre: 71 to 74, inclusive. 79-Z-75; 79-Z-76; 79-Z-77; 79-Z-78 and 79-Z-79; 79-Z-80 to 79-Z-91, inclusive; 79-Z-155 to 79-Z-167, inclusive; 79-Z-168 to 79-Z-179, inclusive; 79-Z-180 to 79-Z-188, inclusive; 79-Z-189 to 79-Z-202, inclusive; 79-Z-233 to 79-Z-246, inclusive; the next is 79-Z-92 to 79-Z-102, inclusive; 79-Z-103 to 79-Z-112, inclusive; 79-Z-113 to 79-Z-122, inclusive; 79-Z-123 to 79-Z-125, inclusive; and 79-Z-126 to 79-Z-153, inclusive. These being, as the record already shows, the freight rate schedules of the Respondent Walker Brothers, and about which Mr. H. S. Walker has already testified.

Trial Examiner Norwood: Any objection?

Mr. MacIntyre: It was my understanding, until I read the record, that all of those booklets were in evidence—this is off the record, if I may?

Trial Examiner Norwood: Off the record.

1202 (Discussion had off the record.)

Trial Examiner Norwood: On the record.

Mr. MacIntyre: We would like each witness who was subpoenaed to appear here this morning to give his name to the reporter so as to show compliance with the subpoena he has received.

Mr. Garland: Robert Garland.

Mr. Donley: Charles Donley.

Mr. Kim: C. J. Kim.

Mr. Morrow: H. G. Morrow.

Mr. Quinn: L. R. Quinn.

Mr. MacIntyre: For the benefit of those witnesses, I will inform them at this time there will be no opportunity to reach Mr. Quinn today, and neither will we reach Mr. Garland nor Mr. Kim today.

The three gentlemen, Robert Garland, C. J. Kim, and L. R. Quinn, may be excused until tomorrow morning.

Mr. MacIntyre: We will call as our first witness this morning at the instance of the Commission, Charles Donley.

Trial Examiner Norwood: Do you have a subpoena, Mr. Donley?

1203 Mr. Donley: Yes (handing document to the Trial Examiner).

CHARLES DONLEY, a witness called by and on behalf of the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

Q. Mr. Donley, what is your business or occupation?

A. I am traffic manager.

Q. Traffic manager for whom?

A. Various companies located in Pittsburgh and outside, and for certain associations and groups of companies who may arrange with me for traffic manager service.

Q. Do you do traffic management service other than for shippers of material?

A. Yes. I do traffic service for motor carrier operators in the way of making tariffs for their use.

Q. Anyone else, other than shippers?

A. Well, those are carriers I mentioned; motor carriers. And we do work for the waterway carriers of the same style; that is, making tariffs and filing them with the Commissions.

Q. With these exceptions of water carriers and motor carriers, do you render any management traffic 1204 service for people other than shippers?

A. Well, I don't recall any.

Q. And how long have you been engaged in this business?

A. Oh, I have been in it all my life; all my business life. More than 25 years.

All of that time was not in the same way that I am now rendering service. I spent about 12 or 13 years in the employ of the Pennsylvania Railroad prior to going into business for myself.

Q. But you have been in business by yourself in the manner indicated for as much as 25 years?

A. Yes, about that.

Q. That is, the last 25 years?

A. Yes, that has been continuous.

Q. If you had in the last five to ten years represented any people in traffic matters other than the water carriers, motor carriers, and shippers of material, you would probably recall it if it was of a substantial nature, wouldn't you?

A. Well, I should, I just don't want to be bound down to this, because we do a variety of traffic managers' work, all of which I do not do myself. We have a small company, and I ought to know, though, anything of major importance.

Q. Well, now, you talk about your having a small company; just what is the nature of your company?

1205 A. It isn't a company; it is a personal service organization. We ordinarily refer to it as a bureau, and we have—we employ, I would say, from five to seven people, all carried on, of course, under the name of Charles Donley.

Q. And you have sole ownership of the business?

A. Yes.

Q. And you have the business under your management?

A. Yes.

Q. Sole management?

A. Yes, sir.

Q. Will you describe to us in a general, but nevertheless brief manner, Mr. Donley, the freight traffic management that you do for shippers?

A. We act in the capacity of a routine traffic manager, I would say, for companies who do not have employed within their own organization a traffic manager. We would do the supervision of the preparation of shipments for shipping, the handling, and the supervision of the documents of shipping, such as bills of lading, the routing, and the classification and the rating, and information as to the delivery of the goods by the certain methods of transportation, the filing of claims, auditing of freight bills; and then for other companies, we might do just a part of that; and then for groups of people, we would do similar

1206 work, depending altogether on their routine requirements, such as the quoting of freight rates, tracing of shipments, routing, classification, and things of that kind.

Q. I believe you said as to those companies or association of companies that had no traffic managers, you prepared shipments, shipping papers, classification of ratings, and routing, filing of claims, and auditing of freight bills and so on?

A. That is the general nature of the traffic manager's work, and we would do whatever part of that would be required by them in the routine work of their shipping.

Q. Have you served a group of shippers who are manufacturers and sellers of rigid steel conduit?

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A. Yes, sir.

Q. Can you give us the names of those that you served in any capacity?

A. I don't believe I can. Are you Mr. MacIntyre? I want to call you by your name.

Q. Yes.

A. Mr. MacIntyre, I don't believe I could give you the individual names and be sure that I had them all.

Q. Well—

A. We act, if you will pardon me, as the traffic department for the National Electric Products Corporation,
1207 who are manufacturers of conduit, and give to them the routine traffic service which I have described in general. For the others, it has been only a compilation of freight rates.

Q. You can't recall the names of others, other manufacturers whom you have served?

A. Well, I can recall some of them, but I wouldn't want to be bound that I am naming all.

Q. Suppose we try to help you on that, to recall the matter, Mr. Donley, and if in these names that I call off, you have served them in the compilation of freight rates, you can answer yes.

A. With this reservation, that I am dealing entirely from memory, and somem ight be in and some may be out.

Q. I am talking about, at any time during the last four or five or six years, within the last six years.

A. I will try to help you on that.

Q. Central Tube Company?

A. Yes.

Q. Clayton Mark & Company?

A. Yes.

Q. Cohoes Rolling Mill Company?

A. Yes.

Q. Enameled Metals Company?

A. Yes.

1208 Q. Fretz-Moon Tube Company, Inc.?

A. I am not absolutely certain about them, but somewhere within the scope—in this period of time which we have discussed, I believe we gave some freight rate schedules for the Fretz-Moon Tube Company, Inc.

Q. Garland Manufacturing Company?

A. Yes.

Q. General Electric Company?

A. I am not sure about them.

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Q. Laclede Steel Company?
A. Yes.
Q. Laclede Tube Company?
A. I am not sure about them.
Q. I believe you have already answered as to the National Electric Products Corporation?
A. My answer is yes.
Q. Steelduct Company?
A. I am not sure about them. I would be very glad, if you wish, to refresh my memory on those companies and tell you the later periods.
Q. Triangle Conduit and Cable Company, Inc.?
A. Yes.
Q. Walker Brothers?
A. Yes.
Q. Youngstown Sheet & Tube Company?
1209 A. Yes.
Q. General Electric Supply Corporation?
A. I do not think that we ever gave them any freight rate service.
Q. Spang Chalfant, Inc.?
A. I think the answer is no there. I have no recollection of furnishing them any.
Q. Steel & Tubes, Inc.?
A. The same answer as for Spang.
Q. Republic Steel Corporation?
A. I think not.
Q. Steel & Tubes Division of Republic Steel Corporation?
A. I think not.
Q. Clifton Conduit Company?
A. Clifton?
Q. Yes.
A. I think not.
Q. Now, in your answer, you have stated that you are not certain as to the Fretz-Moon Tube Company, Inc. Mr. Donley, I show you Commission's Exhibit 373, which has been certified to here by your attorney as a letter from you to Joseph C. Franz, November 24, 1939 (handing document to witness). I will ask you to look at that and see if that refreshes your memory and recollection as to the Fretz-Moon Tube Company, Inc.?
1210 A. That would indicate that we have furnished them with the freight rate schedules; the Fretz-Moon Tube Company, Inc.

Q. Would you say that looking upon that as one of your records, that it should be taken as an indication or as evidence that you had furnished them—

A. Yes, sir.

Mr. MacIntyre: Mr. Reporter, refer back to the question I asked about Laclede Steel Company and Laclede Tube Company, and see what the answers were.

Mr. Poskanzer: He said yes to Laclede Steel Company and he wasn't sure in regard to Laclede Tube Company.

By Mr. MacIntyre:

Q. Mr. Donley, I show you Commission's Exhibit 390, certified by your attorney as a carbon copy of a letter to Robert S. Booth, Executive Secretary of the Rigid Steel Conduit Association, dated August 2, 1938.

Will you look at that and tell us whether that refreshes your memory and recollection as to whether or not you furnished information which you thought were freight rates to the Steelduct Company?

A. To the extent that the exhibit shows.

Q. As to the extent that the exhibit on its face shows?

A. Yes.

1211 Q. Would you say that you had given them service additional to what this exhibit shows?

Could I see it again? That refers there to a bulletin.

(The witness examined document.)

Q. Well—

A. Do you want me to discuss this in an explanatory way?

Q. Let us see what the question is.

Mr. MacIntyre: Will you read the question?

(Question read.)

A. The answer to that question is no.

By Mr. MacIntyre:

Q. That is, at any time within the past six years?

A. That is right. But this refers to a bulletin service which might be some information as to routing or classifications or things of that nature, but it says that they had not been furnished with any conduit rate bulletins.

Q. Well, would you say that you did not furnish them with freight rate booklets distinguished from the booklets which carry correction sheets, showing changes in freight rates?

A. I think what this means, Mr. MacIntyre, is that we furnished them the original sheet showing freight rates.

Q. Original booklets?

A. Yes. And then it appears that we have not
1212 furnished them with the changes. Now, I am not real sure, but that is what the letter would indicate.

Q. Mr. Donley, I show you now Commission's Exhibits 365, 367, 368, 369, being booklets of several pages each of Rigid Conduit freight rate schedules, dated beginning January 1, 1937, and the last one dated—that is, supplement to No. 4—June 15, 1937, which you and your attorney, Mr. Houston, furnished me in your office, but which carry at the bottom of the first pages of each the words "Prepared by Rigid Steel Conduit Association, 17 East 42nd Street, New York, N. Y." Will you tell us what you know about the preparation of those booklets?

A. These freight rates are taken from the rail carrier or other carrier tariffs.

Q. By whom?

A. By employees in my office.

Q. Employees in your office?

A. Yes. And copied down onto what we would call work sheets, and then they are typed and passed to the printer, or to the mimeographer or whatever way they would be reproduced, and set up in the form in which we find them in these exhibits, and they are what the title of the exhibit shows, freight rates applying to the points that are named on the products that are shown.

Q. What did you do with them after you pre-
1213 pared them and compiled them and had them reproduced in that form?

A. Depending altogether on my memory, I would say that those that are marked "Prepared by the Rigid Steel Conduit Association," would either be sent direct to them for distribution or we would send them to such companies as they would give to us for distribution. It could be done, and it may have been done both ways. I am not real sure. When you come over to the—

Q. Let us talk about the ones I have called to your attention, for the moment, Mr. Donley. Isn't it a fact that you did send booklets, of which those are duplicates, to the Rigid Steel Conduit Association for distribution?

A. Well, I wouldn't know what they were going to do with them. But it is a fact we sent them booklets like this one in the exhibit.

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Q. Duplicates of those that I have called your attention to?

A. That is right.

Trial Examiner Norwood: Well, did you send those in sufficient numbers to be distributed to each one of the members?

The Witness: Well, the regular course of the work would be that we would be told how many copies to produce, and I would not assume what they were going to do with them. But ordinarily they would tell us
1214 how many to reproduce, and they may have told us how to distribute them. But certain copies in the regular routine of business would be supplied to them.

Q. Well, would you have known to whom and how to distribute them, except upon information from the offices of the Rigid Steel Conduit Association?

A. No.

Q. So you acted—whether you distributed them directly or sent them to the offices of the Rigid Steel Conduit Association for them to do what they cared to do, you did at the bidding of, and the request of the Association itself; it that correct?

A. Yes.

Q. You were requested to make up several hundred of each of those booklets when you did have them reproduced and duplicated, is that correct?

A. I assume that is correct, Mr. MacIntyre, because we—I know, without getting too exact numbers, as by hundreds, as you say, that we would reproduce a quantity.

Q. Several hundred at a time?

A. I would think so.

Mr. MacIntyre: I want you to make these two booklets, giving this the next exhibit number, and all the pages sub-lettered pages.

(The documents above referred to were marked,
1215 for identification, "Commission's Exhibits 697-A to O, inclusive, and 698-A to N," inclusive.)

Mr. MacIntyre: I show Commission's Exhibit No. 697-A to O to Mr. Houston, and ask him to please state whether he would agree that is a freight rate bulletin which he certified to be as being genuine and authentic, as it appears to me on its face—of what it purports to be on its face, and as furnished from the office of Mr. Charles Donley.

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Mr. Houston: I will state these were furnished by Mr. Donley. I can't vouch for anything more than what they appear to be on their face. I don't know whether they are complete. It is a freight rate book and I wouldn't be able to state whether it is anything else. It has my signature of each page, for what it is worth.

Mr. MacIntyre: But as to the number of pages that are there, you do certify them as being authentic of what it purports to be?

Mr. Houston: As having been furnished from Mr. Donley's file.

Mr. MacIntyre: And as authentic of what they purport to be?

Mr. Houston: I will go that far.

Mr. MacIntyre: Now I show to Mr. McDaniel Commission's Exhibit, for identification, 698-A to N, purport-
1216 ing to be a schedule of freight rates from Rigid Steel Conduit over the name Spang Chalfant, Inc., and which was sent to me by the attorneys for that firm in response to a request for the freight rate bulletin of that company, and ask you—ask him if he will agree that they were furnished by that firm and that they are authentic of what they purport to be on their face?

Mr. McDaniel: They were produced by us and are authentic of what they purport to be.

Mr. MacIntyre: And you say they were produced from Spang Chalfant files?

Mr. McDaniel: Yes.

Mr. MacIntyre: If your Honor please, I now offer in evidence Commission's Exhibits 697-A to 697-O, inclusive, and 698-A to 698-N, inclusive, the first as the freight rate schedules on rigid steel conduits of the Triangle Conduit and Cable Company, Inc., October 25, 1938, and the second as the freight rate schedules on rigid steel conduits of Spang Chalfant, Inc., February 26, 1940.

Trial Examiner Norwood: Off the record.

(Discussion had off the record.)

Trial Examiner Norwood: On the record.

Mr. Stewart: I don't understand that these are offered for the purpose of showing Mr. Donley prepared the
1217 Spang Chalfant.

Mr. MacIntyre: I am offering them on what the record now shows about them.

Mr. Stewart: No objection.

Mr. MacIntyre: As to the certifications as made.

Trial Examiner Norwood: Received as marked; Commission's Exhibit 697-A to 697-O, and 698-A to 698-N.

COMMISSION'S EXHIBITS NOS. 697-A to O, inclusive, and 698-A to N, inclusive, were offered and received in evidence.

By Mr. MacIntyre:

Q. I show you, Mr. Donley, Commission's Exhibits 370, 371, 372, 697-A to 697-O, and 698-A to 698-N, and I ask you to state if you recognize those, and, if so, as what?

A. 370 is the schedule of freight rates on rigid steel conduit as shown on the face as applying from the points shown.

371 is the same kind of a schedule. Both of these show the same information.

Q. There is 372 there also.

A. 372 shows the same general information as to freight rates.

Q. And 697-A to 697-O; also 698-A to 698-N.

A. 697-A to O appear to show the same informa-
1218 tion as to freight rates.

698-A through to N appears to show the same information.

Q. Well, what do you know about those compilations, in addition to what they show on their face?

A. Well, for example, on Exhibit 370—take page 4,—shows destinations in the State of Alabama, the carload rates, the rail station rates that apply on rigid conduit—

Trial Examiner Norwood: That is, per hundred pounds?

The Witness: That is per 100 pounds.

By Mr. MacIntyre:

Q. When do you recall having handled or seen those documents before; or a duplicate of it?

A. These appear to be, Mr. MacIntyre, the freight rate schedules that were prepared in my office. I didn't have these exact ones except so far as they are identified by Mr. Houston, but I assume they were.

Q. Do you recall having prepared them for the company—the companies whose names appear on them?

A. I recall having prepared schedules similar to these.

Mr. Stewart: For what? I didn't catch what you said.

The Witness: Similar to these.

By Mr. MacIntyre:

1219 Q. For the companies whose names appear on those?

A. For the Youngstown Sheet & Tube; for the Central Tube; for the Triangle Conduit and Cable Company. I don't recall having prepared any schedules for the Spang Chalfant.

Q. Will you check your records at your office and let us know here today what your records show with respect to whether or not you have prepared such documents as those for Spang Chalfant?

A. I will be glad to.

Q. Now, pursuant with what arrangement did you prepare such documents as those for the companies whose names appear on the face of the documents?

A. Depending altogether on my memory as to dates. As I recall, it was in 1936—I don't know the exact month—we prepared through the request of the Rigid Conduit—what is the style—the Rigid Steel Conduit Association, freight schedules similar to these.

Later—and I am depending on my memory again—I believe it was some time in the fall of 1937 that we discontinued the preparation for the Association, for the Conduit Association, and prepared them for the individual companies, such as I have testified to.

Now, that change-over would be done at the request of somebody. I don't know just who it was at the time, but the same type of schedule was prepared.

1220 I think that is illustrated as between Exhibits 369, which is prepared by the Rigid Steel Conduit Association, and 370, the Youngstown Sheet & Tube Company, for example.

Q. You do not recall the circumstances of the change-over from the preparation of those carrying the name of the Association and those that do not carry the name of the Association; is that correct?

A. That is right.

Q. Mr. Donley, I show you Commission's Exhibits 402 and 403, and I will ask you if by referring to those you can refresh your memory and recollection as to the circumstances of the change-over to which you have just referred.

A. This letter is dated May—

Mr. Stewart: Just a moment. The question is does that

refresh your recollection? I would like to see the exhibit before you answer the question.

A. This would refresh my recollection.

Mr. Stewart: Would you let me see it?

Mr. MacIntyre: It is a letter of Mr. Donley. I don't think it would be necessary.

Trial Examiner Norwood: Is that in the letter?

Mr. MacIntyre: It is in evidence, and it is a letter of Mr. Donley. I am asking him to look at it.

1221 Trial Examiner Norwood: Counsel may examine it if he wants to.

Mr. MacIntyre: He said it does refresh his recollection.

Mr. Stewart: I just want to see what the exhibit is. What is the question?

Mr. MacIntyre: I asked Mr. Donley if these two exhibits refreshed his memory and recollection.

Mr. Stewart: Where is the other one?

Mr. MacIntyre: Here.

Mr. Stewart: All right.

Mr. MacIntyre: As to the circumstances of that change-over, and he said they do.

Mr. Stewart: You mean in May, 1937?

A. I will try to determine the extent by looking it over.

By Mr. MacIntyre:

Q. Since you stated your memory and recollection have been refreshed as to the circumstances of that change-over to which you have made reference already, I will ask you what the circumstances were, and ask you to tell us all about the change-over that you can now recall.

A. I can't do that, Mr. MacIntyre. I don't remember all of the circumstances.

Trial Examiner Norwood: Well, are the circum-

1222 stances named in the letter there?

The Witness: That is what I am trying to determine.

By Mr. MacIntyre:

Q. I want you to add to what the record shows as to any of those circumstances.

Mr. Stewart: Well, this is just the point, the record already shows his services were terminated in September, 1937. You have proved that by your own testimony. And this is May, 1937. Your record shows when the services were terminated.

Mr. MacIntyre: Certainly, Mr. Stewart, but certain things took place prior to the termination of those services, and I now want the witness to tell us about those things that occurred prior to the termination.

Mr. Stewart: If that is what you are asking him. I didn't understand that was what you were asking him.

By Mr. MacIntyre:

Q. Those things that led up to the termination, will you tell us all that you know about those, Mr. Donley?

A. This communication of May 4, 1937, does not refresh my memory as to the extent that I could tell you all that happened in the change-over, because this letter merely refers to technical requirements about issuing supplements.

Q. All right. Tell us all that you can concerning
1223 that change-over, that is, of the circumstances that were present at the time that document was written.

A. All that I know, Mr. MacIntyre, is that we made a change-over from—showing on the front page of these freight rate schedules, the name of the Association to the individual company, and that has, no doubt, been done upon the request of someone, either connected with the Association or the individual companies. Now, I don't know who that was at the present time. I expect I could find out. But I don't know now. And this communication here would not refresh my memory to that extent, because it has to deal here with the supplements pertaining to short notice, that is, short notice of freight rates; technical matters.

Q. Is it your testimony here at this time that the Association gave you or did not give you directions to take their name off the publications, and to put the individual company names on the publication?

A. I have no recollection of the Association giving me any information of that kind.

Q. Well, after this change-over took place there in September, 1937, you continued to correspond with the Association and to handle publications for these members at the request of the Association, did you?

A. I do not recall that they requested me to handle it for the individuals. The natural routine would be
1224 that someone would call us on the telephone, or in some way tell us that, just to change the front page of the freight tariff.

Q. Mr. Donley, I show you Commission's Exhibit No. 406, and ask you if that will refresh your memory and recollection as to a request made by the Association to you and to Mr. C. J. Kim concerning the publication and distribution of these bulletins subsequent to September, 1938, and over the names of the individual companies?

Mr. Stewart: You don't mean 1938?

Mr. MacIntyre: 1937. Change that.

A. Well, this communication from Mr. Booth to Mr. Kim of the National Electric Products Corporation is only valuable to what it states here, insofar as it refers to me, that I have said that is what he says I said, that "The cost of making the necessary changes in the freight rate book are in your hands—" meaning Mr. Kim. And I don't recall just what specific things Mr. Kim said to me, or whether or not it was Mr. Kim that told me to make the changes.

By Mr. MacIntyre:

Q. Is it your testimony now, Mr. Donley, that you have no recollection whatever concerning correspondence about such request for publication from or with Mr. Booth of The Rigid Steel Conduit Association or Organization 1225 Service Corporation?

A. I am not trying to evade that, I am trying to give you all the facts I can call to memory. But this is quite a ways back, and we have rather voluminous correspondence in our office, and I don't like to depend on my memory to say just exactly whether we had correspondence, whether it was a telephone, whether somebody called at the office about it.

Q. Well, rather than attempting to remember any specific detail of it, is it your testimony now that you have no recollection of correspondence concerning requests or directions as to handling these publications from the offices of the Rigid Steel Conduit Association after September, 1937?

A. I just can't recall any specific letter or communication.

Q. I am not asking you to recall any specific letter. I am asking you to recall the general condition. Don't you recall, as a general condition, that you did carry on correspondence with Mr. Booth, R. S. Booth, throughout 1937 to 1939—that is, through 1937, '38, and 1939—concerning those matters?

A. I know in a general way we had correspondence with Mr. Booth pertaining to the freight rate schedules.

Q. That you were publishing for the various companies?

1226 A. That is right. But I am not clear on that point as to change-over into the individual companies.

Q. And you do recall that he made certain requests of you during that period of time, as to the preparation and distribution of these various freight rate compilations; is that correct?

Mr. Stewart: I suggest that is leading.

Trial Examiner Norwood: He may lead this witness to get the probative facts.

Mr. Houston: I object. Do you want the whole period, Mr. MacIntyre?

Trial Examiner Norwood: I think the question is very fair. Objection is overruled. You may answer the question.

The Witness: Read it, please.

(Question read.)

Mr. Poskanzer: May I add a further objection? This question assumes the facts contrary to the record. I think the record now shows that Mr. Booth was not connected with the Rigid Steel Conduit Association in '39 or the major part of '38. Any correspondence he had with Mr. Booth during that period would not affect the Rigid Steel Conduit Association.

Mr. MacIntyre: Well, I want to protest now the statement by counsel for any of the Respondents as to

1227 what the record shows under circumstances such as these, because the statement that is just made is contrary to the testimony of Mr. Booth and contrary to the showing of certain exhibits, and I dislike having to take the time now to prove to the witness and to counsel for the Respondent, so that I may proceed with a showing that I am not misstating the record with the questioning of the witness.

Trial Examiner Norwood: I will overrule the objection. I think counsel is right about it.

Answer the question.

A. I cannot answer the question, Mr. MacIntyre, yes or no.

Trial Examiner Norwood: Answer it any way you want to.

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A. Then I—naturally from the time we had the contact with Mr. Booth, about which I have already testified, that there was correspondence pertaining to the nature of these freight rate schedules, what they should show, and there was correspondence naturally as to their distribution. I could not recall all of that, because that would be rather voluminous. Freight rates change continuously. And there might be some instructions—strike that. There were instructions to change the number that you would send out to the different companies from time to time.

1228 That is a routine matter.

Q. And those requests came to you from Mr. Booth after the change-over had been made; is that correct?

A. I didn't say that, Mr. MacIntyre.

Q. Well, don't you recall that such requests were made by him to you?

A. Well, after—what do you mean by after the change?

Q. On September, 1937, change from your issuing these over the name of the Association to the issuance of them over the names of individual companies?

Mr. Stewart: Just a moment, Mr. MacIntyre. Is it your contention that is what the record shows, or are you asking that as a question?

1230 Trial Examiner Norwood: Well, I think he may answer that and in cross-examination you may bring out the difference. The objection is overruled.

A. I do not recall of specific instances where I was asked to make any changes in a freight rate schedule or in the distribution at any particular period of time from Mr. Booth.

By Mr. MacIntyre:

Q. Mr. Donley, I show you Commission's Exhibit 374, carbon copy of a letter from you to Mr. Booth under date of September 16, 1938, in which you describe your preparation of certain bulletins and you tell him, in the last sentence: "We will issue correction to the bulletin at once."

Now, what prompted that letter from you to Mr. Booth as of that date?

A. Well, without having all of the correspondence here, that is, Mr. Booth's letter to which this is a reply, I would say that it had something to do with changes in freight rates that might have occurred at most any time within the

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year, because this, again, has reference only to technical questions of applications of tariffs via certain steamship lines and rail lines on shipments going into Corpus Christi, Texas.

Q. My question, though, Mr. Donley, is just this:
1231 why is it that on December 16, 1938, as is shown by Commission's Exhibit 374, that you were writing Mr. Booth: "We will issue the bulletin at once"?

A. Because there are certain errors or changes in freight rates that were to be made and he probably has called it to our attention, as far as I can—

Q. Why would you be informing him at that time that you were going to issue the bulletin at once?

A. I suppose as a matter of courtesy on what we had done for him previously; the time we were reissuing the schedules for the individual companies.

Q. Then it was a follow-up of the services and courtesies that you had previously rendered him; is that correct?

A. As nearly as I could state.

Q. Now, as to your issuance of these publications, such as Commission's Exhibits 370, 371, 372, 697 and 698, over the names of the individual companies, are you continuing to issue such publications right on down to the present time?

Mr. McDaniel: Just a moment, I object to that, because he said he doesn't recall he issued 698-A to N. I think that should be excluded from the question.

Mr. MacIntyre: I will exclude that from the question; including all the others.

1231-A A. The answer is yes, Mr. MacIntyre, without checking the complete list to see we are doing it for everyone whose names I originally answered "Yes" to.

Q. In connection with your publication of those documents for these various companies, many of the names which we have already discussed here, and to which you have answered "Yes", have you collaborated with representatives of those companies concerning their publications?

A. I am not sure that I know what you mean by "collaborated."

Q. Discussed with them what should be included in the publications and the manner in which it should be set up as a publication.

A. They give us instructions as to how many issues they would want, and we would have what we would say running instructions as to the main to those companies, and it is our

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own prerogative to make the changes as they are naturally made in the freight rates by the different carriers, and we would issue a supplement or an amendment to those schedules, depending upon the changes that are made currently by the railroads and water lines and truck lines.

Q. And do the representatives of these companies inform you as to the form in which these publications are put up by you, and statements that are concerned in them?

1232 A. What do you mean by statements? The only statements I know of do have application to the freight rates.

Q. I call your attention to the second page of Commission's Exhibit 372, which contains a statement, the title of which is: "Method of Figuring Delivered Price." Where did you get the information such as would permit you to include that in a publication of that kind, Mr. Donley?

A. That would be given to us by the companies when they request the number of copies that they want.

Q. In other words, the representatives of the companies for whom you made these up, during that period of time, informed you to include in the bulletins such statements; is that correct?

A. Any statements that would be in the schedules.

Q. You had no other way of determining from any other source what to include in these bulletins in the way of statements of that character, did you?

A. I did not.

Q. What were you given to understand by the representatives of these companies as to why such statements as that one appearing on page 2 of 372, that is, as to why they wanted that included.

Mr. King: I object as to what he was given to understand, I think if he wants to ask whether any specific statements were made to the witness, I think that

1233 is proper.

Trial Examiner Norwood: Read the last question.

(Last question read.)

Trial Examiner Norwood: You know that he is the only person in the world that could tell what he understood. Everyone else would have to prove what he understands by his statements and circumstances, and so on. He can tell what he understood.

Mr. Poskanzer: Aren't we entitled to know from where we got this understanding? This question is too general.

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Trial Examiner Norwood: I shall overrule the objection and instruct the witness to tell us what he understood from what was said to him.

Mr. Poskanzer: And from whom.

Trial Examiner Norwood: Yes. We will bring that out.

A. I didn't have any understanding as to what these statements mean.

We would be given any statement that should be put in the freight schedule and not told why it should be there, and I have no idea as to why that statement is in there.

By Mr. MacIntyre: Is it your testimony, Mr. Donley, that you made these up and included in them such statements as the one to which I have just called your at-
1234 tention without ever having it expressed to you by any representatives of the companies as to why such statement was to be included or as to what the meaning of it was?

A. That was my statement.

Q. And you prepared these and distributed them to the companies, including such statements as the one to which I made reference, without even knowing to what it made reference; is that correct?

A. Your question is too general, Mr. MacIntyre. You will have to get to the specific statement, because when we get to matters involving freight rates, then I know what I am talking about, and that is the only statements that I know about in these schedules.

Q. Again, Mr. Donley, I call to your attention page 2 of Commission's Exhibit 372, and ask you if you included that in publications which you made up for these Respondents and distributed the same to them without knowing why they wanted that included, or to what it referred when you had included it?

A. On this page there is, first, the caption of "Method of Figuring Delivered Price."

It says: "The freight rates listed herein are to be used to ascertain delivery charges in figuring FOB destination prices to all points in the United States and their pos-
1235 sessions. Where the freight rates shown are "from Pittsburgh, the Pittsburgh basing price must be used. If the freight rates shown are from Chicago, Illinois, the Chicago basing prices must be used."

Now, I know what the Pittsburgh and Chicago freight rates are, and they are shown in the schedule, but I do not know anything about why they may be applied in one way

or another, and I think, Mr. MacIntyre, that the statements and the rates themselves are self-explanatory, and as to the others, it says:

"These are the lowest obtainable rates, etc."

Naturally, we put into this tariff the lowest freight rate that comes from any tariff that is filed with an Interstate or State Commission.

And then the third paragraph here is, in substance, a notice of just what I stated: that these rates are compiled from the tariffs that are on file with these Commissions.

Q. Is it your testimony you don't know what that statement means, as to how the prices should be figured?

A. I just don't know a thing about prices, Mr. MacIntyre.

Q. You took information from these representatives and disseminated it to them without knowing what it was all about?

Mr. Stewart: I submit this is becoming an argument, now. The witness has already stated plainly what he knows and I submit further testimony would be plainly argument.

1236 Trial Examiner Norwood: He may answer the question.

By Mr. MacIntyre:

Q. Is that correct, Mr. Donley?

Mr. Stewart: What information?

By Mr. MacIntyre:

Q. Is that correct?

A. That is not correct.

Q. Did you know what this statement on page 2 of Commission's Exhibit 372 was all about when you took it from these people and then disseminated it to them?

Mr. Stewart: I submit that question is utterly meaningless, as to what it is all about.

Trial Examiner Norwood: I think it is fairly clear. Objection overruled.

Mr. Poskanzer: I object on the ground it is entirely immaterial what this witness knew or understood. The witness states that this matter was prepared by the Respondent Companies and furnished to him and printed in this leaflet. Is there any requirement—

Trial Examiner Norwood: Is this agency here a respondent?

Mr. MacIntyre: Mr. Donley is a Respondent.

Mr. Poskanzer: Is there any requirement he must understand what other people furnish him to print?

Trial Examiner Norwood: I think he may bring it
1237 out. The objection is overruled.

The Witness: First, Mr. Examiner, let me say we do not disseminate the information, if I understand the term as you use it. In other words, we do not try to interpret information, and if any company wants us to put something in a freight schedule which they expect to use in connection with the freight rate, we would take that and put it in the tariff at their direction, and we would not necessarily know what it means.

By Mr. MacIntyre:

Q. You didn't understand that statement at the time you distributed it, after it was furnished to you?

Mr. Stewart: I subject that is immaterial as to whether he understood it or not.

Mr. King: We have been around that six times.

Mr. MacIntyre: If your Honor please, I submit the record is not sufficiently clear as to the limit of this man's understanding, as to what he was to do, and about that statement, I want it to be clear.

Trial Examiner Norwood: I shall overrule the objection and permit him to answer the question.

Read the last question.

(Last question read.)

Mr. Stewart: I object and ask counsel to specify what statement he is talking about.

1238 By Mr. MacIntyre:

Q. The statement below the caption: "Method of Figuring Delivered Price," page 2, Commission's Exhibit 372.

Trial Examiner Norwood: Answer the question.

A. I don't know anything about the method of figuring delivered prices.

Mr. Stewart: All right, then.

By Mr. MacIntyre:

Q. And you did not know, at the time you distributed that statement, after it was given to you, what it meant, is that correct?

Mr. Stewart: I submit it is plainly immaterial. What

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difference does it make whether he understood it at that time or at any other time?

Trial Examiner Norwood: Overruled. I shall let him answer.

Read the question.

(Last question read.)

A. I did not know anything about the method of figuring delivered prices—

Trial Examiner Norwood: Did you know what this statement meant?

The Witness: That, Mr. Examiner, is not a clear question. I know what part of the statement means.

Trial Examiner Norwood: Tell us what part of it.

1239 The Witness: I know this: where it refers to freight rates that the freight rates are shown in here from these points and to these destinations, but as to what use is made of them by someone who gives me this statement, I do not know anything about it.

By Mr. MacIntyre:

Q. Is it your testimony now, Mr. Donley, that you did not know what the first statement under the first caption of page 2 of Commission's Exhibit 372 meant, at the time you distributed it?

A. I have answered that question.

Trial Examiner Norwood: I think he has answered that question.

A. I have answered it just as clear as I can make it, and I want to help you all I can.

Mr. MacIntyre: I submit that is not the answer to that particular question, if your Honor please.

Trial Examiner Norwood: That is the answer he wants to give.

Mr. Stewart: Yes. It is not the answer Mr. MacIntyre wants.

By Mr. MacIntyre:

1241 Q. Mr. Donley, referring to the statement directly below the caption: "Method of Figuring Delivered Price," as it appears on page A, which is the inside of the outside cover on Commission's Exhibit 365: can you say whether or not that, at that time you caused that to be included in that statement in that publication, you understood it?

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Mr. Stewart: I submit there is no evidence, Mr. Examiner, Mr. Donley caused it to be included in there. The evidence is that the representatives of the particular company gave him the data to put in the folder, and he put it in.

Trial Examiner Norwood: I think that is very clear. I shall overrule the objection.

Answer the question.

Mr. Stewart: The question assumes Mr. Donley caused it to be put in there.

Trial Examiner Norwood: The question assumes Mr. Donley put it in there—

Mr. Stewart: Printed.

Trial Examiner Norwood: That was something he had issued here.

Mr. Stewart: That is all right, if that is clear.

Trial Examiner Norwood: Go ahead.

A. That part of this method of figuring delivered prices which refers to prices was not understood by me.

1242 By Mr. MacIntyre:

Q. You included that in that booklet at the bidding of representatives of the industry and sent it to the Association for distribution, or distributed it to members of the Association without knowing what it means; is that correct?

Mr. Stewart: I object to that.

Trial Examiner Norwood: Objection sustained. He has answered that heretofore.

Go ahead.

By Mr. MacIntyre:

Q. Were you told at that time why it was desirable on the part of the people who asked you to include that, to have it included in the booklet?

A. No.

Mr. Poskanzer: I object to that unless he identifies the people.

Trial Examiner Norwood: The objection is overruled. He may answer.

The Witness: I answered the question.

Trial Examiner Norwood: What was your answer?

The Witness: "No."

By Mr. MacIntyre:

Q. And it is your testimony at this time, Mr. Donley, that you have no knowledge whatever as to how it
1243 was used by the people who used the booklet after you put it in the booklet; is that correct?

A. I have no knowledge of how they used the freight rates that are in this booklet in connection with any prices. This is nothing more than a statement of what we would call legal freight rates.

Q. And these, as legal freight rates, Mr. Donley, I believe you stated are the lowest rates, as you understood them at the time, applying between the shipping point that is shown opposite "P" for Pittsburgh, or "C" for Chicago; to the destination shown opposite the rate; is that correct?

A. Yes, and by the word "Legal," we mean that from those tariffs which are on file with the Commissions.

Q. And when you say you took the lowest on file between such points; that is, the lowest on file with the Commissions as between the points shown, you mean by a single route; is that correct?

A. Well, if you will pardon me. You are getting into a good bit of technicality, when you ask that question.

Q. I would like for you to answer that question, and we will ask some more along that line before we get through.

A. Then I will ask you what you mean by single route.

Q. Well, as between those destinations and Pittsburgh, for example, where you have more than one route
1244 and more than one rate applying over the various routes: which one did you take for inclusion in that booklet?

A. Could I use a point in here for an example?

Q. Yes.

A. Take on page 5 of this exhibit, we have Illinois. Take the first town, Beardstown, the rate from Pittsburgh is 39¢. That could be the rate by more than one route; in fact, several routes. We would use the lowest freight rate via one or more routes.

Q. And if there should have been a different rate by one of the routes that wasn't the lowest, you would not have shown that, or shown the route, would you?

A. We would show the lowest freight rate, as long as it is in a published tariff.

Q. But not any other rates by any other routes; is that correct?

A. Well, in so far as regarding human fallibility in making freight rates, we would show only the lowest rates.

Q. And if there was a different route—a different rate, applying by another route, between those points, you would not show it; is that correct?

A. No. I mean we would not.

Q. You would not show it?

A. Yes.

Q. And why not?

1245 A. Well, because that is the customary method of figuring freight rates. When we are asked what is the freight rate between Pittsburgh and any point, we give, naturally, the lowest freight rate.

Q. By any and all routes?

A. Yes, sir.

Q. And if it became desirable on the part of a buyer or shipper to use any other route than the one carrying the lowest rate, he would not be able to find out what the rate happened to be from any of these booklets we have been talking about here this morning, could he?

A. Not from the booklets, no.

Q. He would have to go to the official tariff to get that?

A. We often get those inquiries. If I could explain, some good salesman for some certain railroad might ask for shipments to be routed a certain way, so as to favor that line; the rate might be higher. We would tell that on request.

Q. And if either the shipper or the consumer in a particular instance desired to specify on their bill of lading that a shipment be made via a particular route, they would not know, by looking at any of the publications to which we have made reference here this morning, whether they were covered by the rate that you have shown; is that correct?

1246 Trial Examiner Norwood: We will have a five minute recess.

(A short recess was had.)

Trial Examiner Norwood: Mr. Donley, resume the stand.

Mr. Houston: Mr. Donley is making a telephone call to secure some information.

Trial Examiner Norwood: All right.

Mr. MacIntyre: We will be ready in a minute or so.

Trial Examiner Norwood: All right.

(The recess was continued.)

Trial Examiner Norwood: Proceed.

Mr. MacIntyre: Please read the question to the witness, please, the pending question.

(The last question was read.)

A. That is correct, except in certain instances where we show both the all rail and the rail-water-and-rail rates, where there is practically always a differential. In other words, a shipper may want to choose, either for his own interests or that of his customer, to ship by all rail routes or by the rail-water-rail routes, as for example, in Texas, on page 10 of Exhibit 370, at Amarillo, Texas, the all rail rate would be $1 from Pittsburgh, and the rail-water-
1247 rail rate would be 74-1/2¢. That is illustrative of what the differential is.

1248 By Mr. MacIntyre:

Q. Therefore, with the exceptions you have pointed out, no shipper or consignee could determine from the publications which we have made reference to, whether the rate shown to the particular destination involved in any of these publications to which we have made reference, apply on the bill of lading where he specified a particular route; is that correct?

A. I am sorry, I couldn't answer that, unless I knew what the particular route would be. If you will pardon me a moment, Mr. MacIntyre, in the—

Trial Examiner Norwood: Well, he couldn't tell whether the rate applied to a particular route, could he?

The Witness: By looking at the schedule and
1249 finding a freight rate other than in some particular instances to which I have referred as applicable by rail-water-rail, the freight rates shown would not give the route.

By Mr. MacIntyre:

Q. And if he specified a particular route, if any shipper specified a particular route, then he would not know whether that rate would apply, would he?

A. That isn't helpful, Mr. MacIntyre, unless we know what you mean by particular route, because that has so

many ramifications. It might be a route by truck, or a route by—

Trial Examiner Norwood: Well, he means the particular rail route, I think.

The Witness: Well, it is still not informative. I wouldn't want it to go on the record that way, because it is not clear. It wouldn't be clear afterward when you would look at it.

By Mr. MacIntyre:

Q. Well, for example, if a shipper in making a shipment from Pittsburgh to Wheeling, West Virginia—strike Wheeling—to any point outside of Pittsburgh, over which different routes carrying different rates applied, when that shipper in making a shipment to any such point specified a particular route, he wouldn't know, by referring to any of these publications, whether the rate shown
1250 therein was the applicable rate, would he?

A. That is a difficult question to answer, very difficult, because it has its ramifications.

Trial Examiner Norwood: Would he know? I think you can answer that yes or no. Could he look in your book and tell whether that is a rate on a particular railroad?

The Witness: He could not. The rate here does not carry a route. If you will pardon me, I wanted to finish my statement made pertaining to certain rates that apply for what we call store door delivery, where there is also a difference in what we call station delivery, and that has—that is pertinent to what your question is as to routes.

By Mr. MacIntyre:

Q. Yes, but they would have to be specified, that is, the particular routes shown there would have to be specified before the rate would apply?

A. That's right.

Q. And wherever the route isn't shown, then he would not be sure that the rate shown applies to any rate that he specifies on his bill of lading; that is correct, isn't it?

A. It is generally understood in our daily working with freight rates, and with our contacts with those that we give rates to, that we quote the lowest possible
1251 freight rate.

Q. But if he desires to specify any route, he doesn't know that he is guaranteed that rate?

A. The rate which we would quote, and which is in here, does not carry a particular route. But I don't like to let that answer go flat or complete the way you put it, because it is not—

Q. We can have that explained further, Mr. Donley. I want to ask you another question now: the only way that a shipper could be sure that these rates in these publications to which we have made reference this morning are the applicable rates, and would be guaranteed to him as the actual rate charged, would be by leaving his bill of lading open as to routes and letting the railroad take any route over which that rate might apply; is that correct?

A. He would have to state on his bill of lading that he wanted the lowest possible freight rate.

Q. And he wouldn't have anything to say about the particular route, then? He couldn't choose a route in specifying that?

A. He could.

Q. How could he, from any information he would take from your booklets?

A. If he wanted to put the rate that is shown on here on his bill of lading, on his shipping papers, it be-
1252 comes a contract; he can enter that rate on there; and if it is not the lowest rate or correct rate, or the rate that would apply by any other route than he specifies, the carrier would tell him so. They would not accept the shipment on that basis.

Q. Yes. But in order to be sure that he was getting this rate, and without having the carrier to inform him, he would have to leave his bill of lading open as to route?

A. No. He would put the rate on the bill of lading, and he would put his route on the bill of lading, and you offer that as a shipment going to a certain place at this rate, and via this route, and if the carrier did not accept it, he doesn't make the contract, he turns it back to him; your route is wrong or your rate is wrong.

Q. And it is necessary for him to get that rate from somewhere else; is that correct?

A. It is easily available; he can get it from our office, or the railroad office or highway, waterway, whatever he is shipping.

Q. Why didn't you include in these bulletins at the time you made them up, Mr. Donley, all rates by all applicable routes between the division, instead of taking a single rate

between the particular destinations as Pittsburgh and Chicago?

A. It would be entirely too voluminous. You would
1253 have, oh, you would go west of the Mississippi River, and you would have a dozen or more routes by which the rates would apply.

Q. By which different rates would apply; is that correct?

A. No. Via routes, I am talking about only.

Q. Well, in that case you would need to specify only one rate as applying by routes A, B, C, D; is that correct?

A. Oh, no. Your customer has a good bit to say about that. He wants his shipments coming via certain routes, and you have to respect that requirement.

Q. When he specifies a requirement as to any particular route, it is likely to carry a different rate than the one that is in the book you made up for the shipper; is that correct?

A. No; he would specify his route, and the shipper would put the rate on the bill of lading, and the route which he has asked for, and if that rate don't apply via that route, the carrier doesn't accept it.

Q. But then the book doesn't help him in that respect in any way in determining rates, does it?

A. The book tells him what the rate is.

Q. By one route, but you say if it isn't the proper rate by that route, there is no contract; then the book doesn't help him in determining what is the proper rate, does it?

Mr. Stewart: Just a minute. Are you through with your question?

1254 Mr. MacIntyre: Yes.

Mr. Stewart: Let me have the question again, because you interjected something there, and I don't think the witness heard.

(Last question read.)

By Mr. MacIntyre:

Q. In such a situation?

A. Well, to give you a technical answer, it does, because it quotes a rate, and it would only be the rare exception where you would have any different rate; therefore, it has told the shipper what the rate is, and if he has found out that that isn't the rate, then he has access to several places where he can find out what the correct rate is.

Q. And where are those places?

A. In the same place where his tariff is issued, or from the carriers' offices, readily available.

Q. And could he also find out from those same sources, the rates which are shown in these books of yours, to which we have made reference this morning?

A. Oh, yes, these are all taken from tariffs that are on public file.

Q. And any shipper can get them from his nearest freight office by simply asking for them in writing?

A. Or from his own office, where they keep freight
1255 rate schedules on file.

Q. Now, why is it, Mr. Donley, in your preparation of these publications which we have made reference to, Commission's Exhibits 365 to 372, inclusive, and 697 and 698, why is it in your listing of freight rates in those bulletins you show rates only from Pittsburgh and from Chicago?

1256 A. Well, those are all the freight rates.

Q. Do you know why?

A. No.

Q. Do you see how Laclede Steel Company, in shipping rigid steel conduit from St. Louis to any destination, could use any information that you compile for it in such booklets as we have just referred to in connection with its shipments?

Mr. Houston: I object to that question. I don't think that has any materiality at all.

This witness is not up here to state what Laclede Steel can do with this.

Trial Examiner Norwood: I think there is a question, there, as to the use these books are put to here. That is one of the issues, here, and he is endeavoring to eliminate the idea of its being used in a particular way that is inconsistent with his contention.

Mr. Stewart: May I suggest the form of the question is rather bad: "Do you see how"?

Mr. MacIntyre: This man is an expert on freight rates.

Mr. Stewart: It isn't a question of does he see how. It is a question of what he knows.

Trial Examiner Norwood: If he sees and develops that fact, he may bring out what he sees.

The objection is overruled.

1257 Ask him what he knows.

A. My answer to that, your Honor, is that I just haven't enough information to answer it.

I have no knowledge of how Laclede conducts their busi-

ness. I know nothing of their prices; how they sell, or anything about it.

Freight rates are a fixed thing, Mr. MacIntyre, and we set it up as to what it is and I have no knowledge whatever as to how they are used by any individual company.

Q. Mr. Donley, I show you Commission's Exhibits 77-A to 77-Z-5, inclusive. Please look at that and tell us what information that that contains which would permit Laclede Steel Company to use it in determining freight rates applicable on shipments made by it from its plant in or near St. Louis to any destination?

A. I just don't know, Mr. MacIntyre. I have no idea of how they conduct their business.

Q. Can you tell me how anyone, Laclede or anyone else, can use that in determining freight rates on shipments of conduit from in or around St. Louis to any destination?

A. I don't know. All that I know is that these are the freight rates which Laclede Steel Company, along with others, have asked for and it is strictly freight rates and I don't know how they could use them or how they couldn't use them.

Q. How long have you been compiling and working 1258 with freight rates, Mr. Donley?

A. Oh, all my life. All my business life.

Q. Do you believe that you could determine, by looking at a piece of freight rate information, as to whether it could be used by anyone in shipping a carload of conduit from a particular point to any particular destination?

A. Not unless I knew the nature of their business; what their selling plans are, and so on.

Q. I am not talking about selling plans, Mr. Donley. I am talking about shipping plans, now. I am asking you if you can, after looking at that Exhibit 77-A to 77-Z-5, inclusive, tell me whether or not you see in it any information that you, as a freight rate man, could use in aiding a shipper in determining the freight rates from any point around St. Louis to any destination?

Mr. Stewart: I object to that as incompetent, irrelevant, and immaterial and asking the opinion of a man who obviously is not familiar with the conduit business and a question with which he could have no familiarity and an answer, if he answered in the affirmative, would be a guess.

Trial Examiner Norwood: Objection overruled.

A. I don't want to evade anything that would help you

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here but I just can't answer that question because I haven't the background. I haven't the information.

1259 Q. All of your knowledge and experience you have accumulated throughout a lifetime in handling freight rates would not permit you to answer that question, is that correct?

A. That is true.

Q. In other words, you don't know, in your compilation of this material for Laclede, whether they could use it as freight rate information in connection with shipping conduit from St. Louis?

A. I do not, Mr. MacIntyre, because—I don't want to repeat, but I don't know. I don't even know why they want these freight rates. They never have told me that. That is not my business. I am a traffic manager.

Q. As a traffic manager, Mr. Donley, do you know how that a man, in securing—or any firm securing a freight rate from point A to B, can determine what his shipping costs would be from C to point D?

A. His shipping costs?

Q. Yes.

A. His freight rates?

Q. Yes.

A. Again you are asking me to try and tell you what some other person can do with some information that I have furnished purely on request and I am sorry, I just couldn't answer that, because I have no thought of what he has in mind—or how he would use a freight rate he has in mind.

1260 Q. Irrespective of what he has in mind: I am asking you now to use all your knowledge and experience as a freight rate expert in telling me if you can whether or not a man with a showing of a freight rate from Pittsburgh to Columbia, Ohio, on a particular shipment, can use that in determining what his shipping cost will be on a similar shipment from St. Louis to Columbus, Ohio?

A. I just can't do that, Mr. MacIntyre, because all that we can show is what the shipping costs are as per that tariff. If you go beyond that and ask what the freight rates are for shipment for some other point, then you could show those, but I still wouldn't know how he is going to use them and there is nothing in my experience that indicates that.

Q. Will you please tell us how Laclede, in looking at anything that is contained in Commission's Exhibit 77-A

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to 77-Z-5 could determine anything about any freight rates out of St. Louis?

A. There are no freight rates shown here.

Q. Is there anything in there that would tell them anything about any freight rates from St. Louis?

A. There are no freight rates shown—

Trial Examiner Norwood: I think those things show what they do show. Don't they speak for themselves? Aren't they in evidence?

The Witness: I am trying to say that.

1261 Trial Examiner Norwood: The witness has said three or four times that he didn't know about this matter.

The Witness: This is bona fide—I think you would call it—of just what it is here. It is just freight rates. It just shows freight rates.

When you go beyond that—I am just getting into a field which I am not familiar with or at least I hope I am not.

I do know what these rates show but I don't know what use they make of them.

Q. You have the rate before you and I am asking you, as a man with a lifetime experience in freight rates, whether or not that you, as a shipping clerk for the Laclede, could find any use in making shipments for the Laclede Steel?

Mr. Houston: I object. I think this has gone far enough.

Trial Examiner Norwood: Objection sustained. Counsel has covered that very thoroughly.

By Mr. MacIntyre:

Q. Mr. Donley, I have asked you to determine and let us know, in as far as you can, whether you have supplied freight information such as is shown by Commission's Exhibit 372, or any ones issued shortly thereafter to Spang Chalfant, Inc.?

A. I find we have and are issuing freight schedules for Spang Chalfant at the present time.

1262 Q. And how long have you been doing that?

A. I believe it is over a period of approximately two years.

If you want that correct, I would prefer to give it to you later; the exact date.

Q. Referring to Commission's Exhibit 698-A to 698-N, inclusive, would you say that that is the type of information that you furnished in that period of time to Spang Chalfant?

A. Yes, sir.

Q. Now, have you informed yourself as to whether you have been furnishing similar information to Steel and Tubes, Inc.?

A. I would like to answer that later, if you will allow me. I am not clear on it. I think you asked me about two others.

Q. Steel and Tubes division of the Republic Steel Corporation.

A. I would like to answer that later, too.

There is another one.

Q. The Laclede Tube Company.

A. My answer was no, on that.

Q. Clifton Conduit Company.

A. My investigation shows that we have not furnished them.

Mr. MacIntyre: If your Honor please, I think it would be well for us to adjourn at this time and convene again about 1:30.

The witness will find it necessary to bring to us further information which he will have to get at his office.

1263 Trial Examiner Norwood: Is that satisfactory to other counsel?

The Witness: I would like to have until two o'clock, if you can make it.

1264 *Direct Examination (Cont'd) by Mr. MacIntyre.*

Q. Mr. Donley, I believe before the noon hour you were asked to determine whether you had rendered service to the Steel & Tube Division of the Republic Steel Corporation similar to the service that you rendered to other sellers of rigid steel conduit, in developing and having published for them certain freight compilations?

A. Yes. I did investigate.

Q. What can you say about that now?

A. I find that we did not.

Q. Now—

A. I find that we did not. The answer to that would be no.

Q. You continued to do so for the Fretz-Moon Tube Company, though?

A. Just let me change that answer. I am confused a little bit on the style of the two companies.

We are now making up freight schedules for Steel
1265 & Tubes, Inc., for Fretz-Moon. I thought you had reference to the other—the Steel—

Q. Steelduct?

A. No. There are two companies with the name Steel Tubes, are there not? I am talking about Steel & Tubes, Incorporated, for Fretz-Moon.

Q. You are still making those up for that company and Fretz-Moon.

A. We are, and if you will pardon me there, Mr. MacIntyre, and let me make one correction: I answered, for Enameled Metals Company, "Yes," and the answer should be "No." That's what I found, on later investigation. We have not made up schedules for Enameled Metals Company.

Q. From what source did you learn, during the lunch hour, that you have not made it up for Enameled Metals?

A. I looked over our books and our records that we have on the orders kept.

Can I make clear there also, as I recall my answer for General Electric, it was "No." I want to be sure that I did say "No." That was the correct answer.

Q. Mr. Donley, I show you Commission's Exhibit 375, which was furnished by you to me from your files. One of the papers you had in your files dealing with rigid steel conduit. Do you recognize that as a list naming, among other things, the subscribers of the service that you
1266 have rendered various companies?

A. That's what this appears to be, Mr. MacIntyre.

Q. Can you tell us about what date that represents, or was made up?

A. I am sorry, I couldn't, from this copy, but as far as I can determine this appears to be the current schedule for us to use in making the freight tariff; the method used.

Q. And you send freight compilations on rigid steel conduit freight rates to these people, among others that you send to?

A. That's right.

Q. You stated that you did not compile and send any material to Enameled Metals Company?

A. That is my investigation of it up to the present time.

Q. Are you prepared to say that you know that the

Rigid Steel Conduit Association did not distribute to Enameled Metals, General Electric Company, and others, the material which you sent to the Rigid Steel Conduit Association?

A. I don't know that.

Q. Mr. Donley, I show you Commission's Exhibit No. 384-A and B, a mimeographed duplicate of a letter which was furnished to me by you, and from your files, a
1267 letter from you to rigid conduit manufacturers September 30, 1938, you state in that first sentence, "We have exchanged correspondence with the Transportation Committee pertaining to the re-issue of our freight rate schedule No. 3." Will you please tell us who the members of that committee were who dealt with you on that matter at that time?

A. I don't know, Mr. MacIntyre, who that committee was then, and I don't like to guess on just what this exchange was, whether it was a telephone conversation or just whether it was correspondence. It says here "correspondence." But I don't—but I want to know just exactly the nature of that correspondence before I answer the question.

Q. Of course, when I made that search of your files and selected that at the time you gave it to me, I found no correspondence of that kind in your files. Now, I am asking you, do you have any recollection of the correspondence that is referred to in that letter?

A. No, I don't. If you didn't find it in the files, why, you had everything that was available.

Q. And is it your testimony here at this time, Mr. Donley, that you have no recollection of anyone who served on that committee, the name of them?

A. I have no recollection of anybody who was named to me as being a member of the Transportation Committee.

We, of course, exchanged correspondence and other
1268 means of communication with various representatives of these companies for whom we publish the schedules. But I can't just at this minute tie it in with thinking of any particular man that was on the Transportation Committee.

Q. I ask you if it is your testimony now that you have no recollection of dealing with a committee, as such, for the industry?

A. I do not have.

Q. Is there anyone in your organization who would have any recollection or would have had reason to have had any knowledge of your dealing with a committee?

A. I would know about anyone who would have such exchanges.

Q. And you have no recollection?

A. I do not.

Q. Do you have any reason to believe that you would have been writing about a committee that was not in existence and about which you did not at that time know anything?

A. I would hardly think that I would.

Q. In other words, you have reason to believe that there was such a committee at that time, or otherwise you would not have written about it?

A. There must have been some designation of certain persons who were to handle this matter with me as traffic manager.

1269 Q. For the industry?

A. I would think so.

Q. Isn't it a fact, Mr. Donley, that Mr. C. J. Kim, assistant sales manager of Respondent National Electric Products Corporation, was chairman of that committee?

A. Well, I don't know if he was. It was never represented to me that he was the chairman. I have almost daily conversations with Mr. Kim on various traffic matters, because we handle the traffic work for his company.

Q. These compilations which you have had printed and otherwise caused to be published for the members of the industry, the printer who handled that for you was Mr. Joseph C. Franz, 63 South 10th Street, South Side, Pittsburgh?

A. Yes, sir.

Q. How long has he been doing that work for you?

A. I believe he is the only printer that we ever engaged in that.

Q. Mr. Donley, I show you Commission's Exhibit No. 385, and ask you to state whether or not that serves to refresh your memory and recollection concerning Mr. Kim, C. J. Kim, of the National Electric Products Corporation, and his activities as a member of the Transportation Committee about which we were just talking?

A. That indicates that we had a contact with Mr.

1270 Kim pertaining to certain changes that are referred to here in the tariff schedules.

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Q. And as a member of the committee?

A. Well, this letter doesn't say that, now, and I wouldn't—I will still have to maintain that I did not know whether Mr. Kim was a member of a committee or not. To me he was someone who was telling me what they wanted done in reference to the freight rate schedules, and I did not know who was on this committee or who he might be speaking for.

Q. If you did not consider that Mr. Kim was on this Transportation Committee about which we were talking a few minutes ago, why did you refer to him in this Commission's Exhibit 385 as you have, in connection with your reference to a Transportation Committee?

A. Because he is familiar, perhaps, more than anyone that I know, with the work that we are doing with these freight schedules, and it is just customary routine to confer with him as one who knows the freight rate situation, in so far as our work is involved, and the conduit manufacturers.

Q. Well, are we correct in our understanding, then, that you did, in connection with your work, depend upon him for advice and information; in that respect?

A. We did to some extent?

Q. And as to the extent indicated by the correspondence?

1271 A. Yes. This has reference here only to one item in a tariff, store door delivery.

Q. Now, speaking of that store door delivery to which reference is made in Commission's Exhibit 385, will you tell us as broadly as you can, and yet as briefly as you can, all that you recall as to how that situation arose that led to this correspondence?

A. Only in generalities.

Store door delivery was a new incidental to transportation services, meaning picking up at a store door and delivering at a store door.

It enters into a freight rate schedule only in so far as the handling of less than carload shipments are involved.

When that came into effect, it was applicable by certain railroads and not applicable by others, and required a great deal of correspondence and communications backwards and forwards, and led to rather voluminous correspondence in all directions because it was something new in transportation.

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Now, naturally, the interests of any less than carload shippers would be affected, and we have—we believe that a part of our services is to have the freight rates be as complete as possible. Therefore, that would lead us in to raising the question ourselves as to what would be required in freight tariff schedules on store door delivery 1272 rates.

Q. But in this instance, that is referred to, Commission's Exhibit 385, it wasn't a raising of the question by you, but by the Triangle Conduit and Cable Company, wasn't it?

A. I think it was a matter that every shipper knew about. Everybody was talking about it. The railroads, truckers, and that would raise the question in every shipper's mind.

Q. But who raised the question as to whether or not you should do this? Wasn't that the Triangle Company, through the offices of the Association?

A. It might have been, and it might have been all the companies.

Q. By referring to Commission's Exhibit 385 there, isn't it your recollection now that that is the way it was brought up?

A. This particular case, yes; but that wouldn't be a controlling thing at all. It would be only one shipper that was interested in a service that was applicable to all.

Q. But prior to September 30, 1938, had you not put out any compilation of freight rates for the rigid steel conduit industry, shown any store door delivery rates at all?

A. I don't remember just when the store door delivery rates became effective.

Q. Referring again to Commission's Exhibit 384-A 1273 and 384-B. That is there to refresh your memory and recollection as to when you first began to consider putting out compilations of freight rates for the rigid steel conduit industry which would show store door delivery rates.

Mr. Stewart: What is the date of that?

Mr. MacIntyre: September, 1938.

Trial Examiner Norwood: Will you read the last question?

(Last question read.)

A. This is an indication that was in our mind and we were trying to develop information as to the needs of conduit manufacturers.

By Mr. MacIntyre:

Q. Now, refreshing your recollection from that; isn't it your testimony that prior to this time you had made no move to include such information in your compilations?

A. Prior to this date?

Q. Yes.

A. I am sorry, I can't help you in that respect, because I just don't have the dates when these tariffs were contemplated—I mean railroad tariffs, and when the subject first came up.

Q. Referring again to Commission's Exhibit 384-A and 384-B, to refresh your memory, if it is necessary: do you say that you had not, prior to that time—will you say
1274 that you had, prior to that time, included in any compilation that you had put out for the rigid steel conduit industry, any showing of store door delivery rates?

A. I am not sure, but I can only say this: whenever that change in freight rate was proposed, we would inquire of all the people for whom we make freight rates as to what their requirements would be. That's a part of our job, to keep people informed on what these are. Whether we did anything just before this date or not, or in a reasonable period before that, I just can't answer it.

Q. Do you have any knowledge now of anything that you did in that direction prior to that date?

A. I cannot recall it.

Q. Do you know of any way in which this problem was handled and brought to your attention except in the manner which is disclosed by Commission's Exhibits 384-A and 384-B?

A. You mean brought to my attention by the conduit manufacturers?

Q. Yes.

A. No.

Q. For handling by you?

A. No. I do not recall that. The normal thing would be that we would bring it to their attention.

Q. Yes, but I am asking you now: do you have any recollection of it having been brought to your atten-
1275 tion in any other way than is disclosed in these exhibits to which we have made reference?

A. I can't just recall that, whether we did or didn't. I don't recall it now.

Q. Now, earlier this morning, Mr. Donley, you were telling us about the types of service that you render shippers as traffic manager for them, which included preparation of shipment and shipping papers and preparation of shipping papers and classifications, and rating, and routing, and so forth; filing claims, auditing freight bills and the like.

Now, except for the National Electric Products Corporation, can you cite us any instance at this time where you have rendered rigid steel conduit manufacturers any service as to freight rate matters, other than the publication and distribution to them either directly or through the Rigid Steel Conduit Association, such documents as Commission's Exhibits 365 to 372, inclusive?

A. That, and only such service as would be required to explain and clarify these freight rates shown in the schedules.

Q. In other words, the only thing you gave them would be these freight rates plus your explanations of these freight rate books?

A. That is correct, in so far as I can recall.

1276 Mr. MacIntyre: I believe that's all.

Trial Examiner Norwood: Cross-examine.

Cross-Examination by Mr. Stewart.

Q. Mr. Donley, as I understand it, these freight rate compilations are simply compilations of freight rates taken from the official Interstate Commerce Commission and other official tariffs of the body which issues them?

A. That is correct.

Q. And so far as you know, the compilations are correct?

A. They are the exact rates that are shown in those tariffs.

Q. And wherever a change in rate was made, did your organization correct them in the compilations that you issued?

A. There is a routine way, through supplements, of making the corrections.

Q. Did you do that?

A. We did.

Q. I assume that you did that when the changes in the rates were made; as quickly as the information came to you?

Mr. MacIntyre: Mr. Examiner, just a moment.

Mr. Stewart: I will withdraw the question.

Mr. MacIntyre: I object to the leading character of that question and—

1277 Mr. Stewart: You don't have to object. I withdrew it—I will withdraw it, if you will please sit down.

Mr. MacIntyre: I ask that the line be dropped.

Mr. Stewart: Dropped, or drawn?

Trial Examiner Norwood: I don't think that is necessary.

Proceed.

By Mr. Stewart:

Q. Mr. Donley, at what point, as the official tariffs were changed by the official bodies, would you make the corrections in the rates?

A. Just as soon as it is mechanically possible to determine the changes; make the corrections on work sheets which are given to the printer, which becomes a supplement to the tariff.

Q. Now, as I understand you, your testimony was that these compilations show the lowest applicable freight rate as between the point of origin and the point of destination; is that right?

A. That is correct.

Q. And if the shipper, or if the consignee chose some other freight rate, a higher one, he was at liberty to do so?

A. Well, I would assume that he would be. We never told him that.

1278 Q. I meant the point shown on the schedules as you printed them.

A. I have only been dealing in my mind and with those points that are in the freight rate schedules.

Q. That is what I meant, so that you understand what I mean.

And what is the rule of the bodies with reference to changes in freight rates? Over what period of time do they take effect? What is the interval between them?

A. The customary period is that a tariff change is made

on 30 days notice from the time it is filed with the Interstate Commerce Commission. There are cases where, through certain procedures, that time is made less. We have, under the Commerce Law, arrangements where applications are made for rates becoming effective on less than statutory notice, even up to one day's notice. The customary time is 30 days' notice, and we generally get the changes, say, 20 to 25 days before they become effective, and then we start our work on making the corrections in these conduit schedules.

Q. Now, then, does that make it possible for you to have in the hands of the conduit manufacturer, before it becomes effective, then, the correct freight rate?

A. That is not always possible. And there are several reasons.

1279 Q. Give us the reasons.

A. One is you may be crowded with work, and you haven't sufficient time; particularly on these changes that are what we call short time. There may be errors in mailing. We don't get the tariff from the railroad or from the water line, and through some other of the many processes we find out there was a change. We would have to request that. But in the normal routine of the work, you can get the information to the subscriber before the rate changes are made.

Q. Now, let me ask you: what is the period with the State Commissions, do you know?

Mr. MacIntyre: I object. We haven't gone into any problems of the State Commissions here, that I know anything about.

Mr. Stewart: Well, I assume the freight rates as covered by the State Commission schedules would be in question. I don't know.

Mr. MacIntyre: I don't recall having specifically gone into it, but go ahead.

Mr. Stewart: If you will agree that we are only concerned with the Interstate Commerce Commission tariffs, I won't ask the question.

Mr. MacIntyre: We are concerned, of course, with what this man has done. If you could lead him into

1280 stating—

Trial Examiner Norwood: The question is what was gone into on direct examination.

Mr. Stewart: I beg your pardon?

Trial Examiner Norwood: The question is what was gone into on direct examination.

Mr. Stewart: As I recall it, the witness did say something about State Commissions in his direct testimony.

The Witness: That is correct.

By Mr. Stewart:

Q. Isn't that correct?

A. I think I can straighten that out.

Q. All right.

A. In these schedules there are both State and Interstate rates. The rules for changing tariffs are generally the same in the states as in the Federal law, but every State, like all laws, has its exceptions. But I am trying to speak of what the general procedure would be.

Q. Mr. Donley, I think I asked you this question, but I will ask it again as a matter of precaution, if I didn't. When you spoke of your compilations showing the lowest applicable rate, did that lowest applicable rate apply to any route, or just one route?

A. It would apply to any normal route. Well, that's the answer.

1281 Trial Examiner Norwood: It is based on the route giving the lowest rate?

The Witness: I believe I said, Mr. Examiner, that it is the lowest rate that applies via the normal routes of the tariffs that are on file with these Commissions.

Trial Examiner Norwood: You mean, then, that any rate you had there was the rate of all the roads serving those points?

The Witness: It would be, with the exceptions that sometimes you might make a mistake and get the wrong rate. But that is what we aim to put in this schedule is the lowest rate via the normal routes of the railroads and the water lines that file their tariffs with the Commissions.

Mr. Poskanzer: And a shipper using that rate would have the choice of more than one route?

The Witness: Yes, sir.

Mr. Poskanzer: It wouldn't be limited to just one route at this rate?

The Witness: No, sir.

Trial Examiner Norwood: Well, now, in a case where one railroad would give a lower rate than another between the same points, what would your booklet show?

The Witness: We would show the rate via—the
1282 lowest rate, and depend, as we said, on the shipper putting that rate on his bill of lading, with the route that he wanted to use. And if that was not accepted, that would raise a question, and we would iron out the question.

Mr. King: Isn't it true when one rail line shows a higher rate between the same points than another, you immediately have reparation cases filed?

The Witness: You have grounds for reparation.

Mr. King: That is what I meant; thank you.

By Mr. Stewart:

Q. Mr. Donley, approximately how many—

Mr. MacIntyre: Just a moment.

Mr. Stewart: You are objecting to my question?

Mr. MacIntyre: No. no.

By Mr. Stewart:

Q. Approximately how many concerns do you serve outside of the particular ones you mentioned here?

A. I am afraid I would be advertising.

Q. Well, are there quite a number?

A. I will say this: I handle the traffic work for the United States Potters Association, which is an association of some 30 potteries; I handle the traffic work for the chain manufacturers; and altogether I suppose there are approximately 200 companies that we do work, shall I say, off and on for; some of them employ us by the
1283 month; others by the job.

Q. Let me ask you: Is there anything about your work which a well-organized traffic department of any company could not do?

A. No.

Mr. Stewart: That is all.

The Witness: We employ the traffic experienced man, the same as the traffic department of any company would do.

By Mr. King:

Q. You spoke in your direct testimony about your attention being directed to store door delivery tariff. Does the passage of the Motor Carrier Act have anything to do with calling your attention to that matter?

Mr. MacIntyre: I object to the leading questions.

Trial Examiner Norwood: Objection sustained.

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By Mr. King:

Q. What called your attention to the store door delivery tariffs that you spoke of?

Mr. MacIntyre: I object to that for the same reason.

Trial Examiner Norwood: Let him answer.

Q. You may answer.

A. Store door delivery service was a major change in the transportation field. Every traffic manager would
1284 know about it through his journals, his house organs, Interstate Commerce Commission notices, notices that had very long hearings before the Commission, because there was controversy between different railroads, and we would have the notice that this was coming from many official sources, and then finally you would get the definite notice of the tariff itself proposed to become effective on certain dates.

Mr. King: Thank you.

By Mr. Houston:

Q. Mr. Donley, did you ever attend any meetings of the Rigid Steel Conduit Association?

A. No, sir.

Q. Did you ever attend any meetings of these manufacturers of conduits, representatives of these manufacturers of conduits, in a meeting of their group?

A. No, sir, I did not.

Mr. Houston: That is all.

Redirect Examination by Mr. MacIntyre.

Q. Mr. Donley, on cross-examination you have stated that your compilation showed the lowest rates, that is, over any normal route. I am asking you now if you want to change your testimony that you gave on direct to the effect that between the points shown in your compila-
1285 tions, showing what is considered to be the lowest rate applicable, there were other routes between those points bearing different rates?

Mr. Stewart: Just a moment. Are you asserting that is what he testified to, or are you asking?

By Mr. MacIntyre:

Q. Didn't you testify to that on direct, Mr. Donley?

A. Not just the way you put it, Mr. MacIntyre.

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Q. Well, in substance.

A. Well, if "in substance" means that I would be held to what you say, no. But if I could answer without saying yes or no, I want to say this: A freight rate is not like prices of goods. It is a fixed thing, and it is a very technical matter to determine what the lowest freight rate is, and sometimes you will make mistakes on combinations and classifications, and all of the things that enter into finding this lowest freight rate. Now, in so far as we can determine that rate with reasonable supervision, we do it. Now, the rate—in answering your question—that rate will normally apply via, I would say, all of the routes that are generally used. There is a possibility of what we call defeating a rate, by trying to work out some combination in connection with maybe a truck line or water line and rail, or through a combination that might be questionable because of the tariff not being clear. All of those
1286 things enter into that, so I don't want to be held here to saying that we always get the very lowest rate in that schedule. But so far as a traffic department could normally function, that is what we expect to do.

Q. Let me put the question to you again, Mr. Donley, so that we all clearly understand it. Is it your testimony now that the rates you have in your compilations shown from Pittsburgh to various destinations are over routes where the lowest rate applies, and that there are no other routes between those points carrying a different rate, that are regularly used for shipments?

A. No, I wouldn't want to say that, Mr. MacIntyre.

Q. What is your testimony in that respect?

A. I have no answer to that. I would have to take every one of those rates and check it myself.

Trial Examiner Norwood: Would those rates that you reported be the lowest rates quoted by any one carrier, or one combination of carriers?

The Witness: Well, that question cannot be answered, Mr. Examiner, because it involves—

Trial Examiner Norwood: You can't say whether they were or whether they were not?

The Witness: That's right. And I would like to say why. Because you have got 250 first class railroads in the United States, and they all have different methods
1287 of naming their rates.

Trial Examiner Norwood: I mean, though, the rates you reported in your booklet, are they the lowest

rates you could find as average rates between the points, or as the lowest rates quoted by any one carrier?

The Witness: It is the lowest rate. There is no such thing as average rate. It is the lowest rate.

Trial Examiner Norwood: The lowest rate?

The Witness: Yes, sir.

By Mr. MacIntyre:

Q. Now, I will ask you this question, Mr. Donley: Is it your testimony that as between the points shown for particular rates in your booklets of the Rigid Steel Conduit, that there are no other rates different from those applicable on regularly used routes?

Mr. Stewart: I didn't get that.

(Last question read.)

Mr. Stewart: Is that what you mean?

Mr. MacIntyre: I will put it to the witness again.

By Mr. MacIntyre:

Q. Mr. Donley, is it your testimony now that out of Pittsburgh to the various destinations shown in your booklets that no rates other than those you show apply on shipments of rigid steel conduit?

1288 A. I don't know.

Q. Is it your testimony that you don't know that there are higher rates than those over some routes?

A. Yes, there may be other rates than these. I don't know. I wouldn't think there would be. But in order to answer that question correctly and definitely, you would have to check all these rates again.

Q. But your book doesn't show whether that is the situation or not?

A. No, it does not.

Q. And you say you don't know whether it is correct or not?

A. I don't know whether there might be some other rates in isolated cases, we will say, that might be different, higher or lower, from what the rate is in the booklet.

1290 By Mr. MacIntyre:

Q. Mr. Donley, if a shipper applies to the railroad—I mean tenders a shipment to a railroad—need he, in an effort to get—that is, in his effort to get the lowest rate—know anything at all about rates or routes, if he gives the railroad the name of the destination?

Mr. Stewart: I object to that. It is a repetition of the former question.

Trial Examiner Norwood: Well, is this man qualified as an expert shipper?

Mr. Stewart: No. I don't know that he is.

Mr. Houston: What is this case about?

Trial Examiner Norwood: Rates.

Mr. MacIntyre: If this man isn't qualified as an expert freight man in what must be done to secure the lowest rates from a railroad, then I don't know who we can get in here as an expert in the City of Pittsburgh, from the testimony he has already given, qualifying him as
1291 such.

Trial Examiner Norwood: Is there a difference in being an expert on what these rates are and what the schedules and tariffs are, and how to do the practical side of the shipping by filling out the bill of lading and securing those rates? Has this man had experience that covers that?

Mr. MacIntyre: Mr. Stewart's first objection to my first question on this line was to the effect that that would be deciding the case, because he had been attempting to show on cross-examination that the whole case revolved about the necessity of these conduit sellers to secure this particular information from this man. My question is to show that it isn't necessary at all to get this information from this man.

Trial Examiner Norwood: Go ahead, and I will let him answer it.

Answer the question.

Mr. MacIntyre: Read the pending question.

(Last question read.)

A. Mr. Examiner, the question is so general that I couldn't attempt to answer it.

By Mr. MacIntyre:

Q. I will put it to you in this form: If a shipper tenders to the railroad a shipment of rigid steel conduit on
1292 an open bill of lading, without specifying either route or rate, but specifies in there the destination, doesn't he get, without knowing what the applicable rate is, the lowest applicable rate to that destination?

Mr. King: If your Honor please, I object to that question, because I think your Honor can take judicial notice of the millions of dollars that the Interstate Commerce

Commission awards in reparation of claims—pursuant to reparation of claims every year in shipments.

Trial Examiner Norwood: The objection is overruled.

Mr. King: The question is ridiculous.

Trial Examiner Norwood: Answer the question.

A. He does not.

Trial Examiner Norwood: Is he supposed to get it by law? The regulations of the Interstate Commerce Commission?

The Witness: The law is that all tariffs must be filed with the Commissions, that makes them legal. If they comply with all the other requirements.

Trial Examiner Norwood: The question is if a shipper delivers goods to the railroad with the destination named, is it the obligation of the carrier to give him the lowest rate and the most economical route?

The Witness: In my opinion, it is not. It is a
1293 very technical question, subject to all sorts of ramifications as to facts and issues that are involved. My answer is—if it is pertinent, and I don't think it is—that he would not.

By Mr. MacIntyre:

Q. If the rules and regulations of the Interstate Commerce Commission provide for such, and are adhered to, it would make unnecessary your business, would it not, Mr. Donley?

Mr. King: I object to that. The rules of the Interstate Commerce Commission don't apply to any such thing.

Trial Examiner Norwood: Objection is sustained:

By Mr. MacIntyre:

Q. Is it your testimony that it is your opinion that such is not the case?

A. What do you mean by "such"?

Q. Now, you have told Mr. Stewart on cross-examination that your compilations show the lowest applicable rates between two given points. Is that true as to rail, or is it true as to water?

Mr. Stewart: Excuse me. May I just hear that? I corrected that to say to mean the points shown in the compilations. That is what I was talking about.

Mr. MacIntyre: I am limiting the question to the same score.

1294 A. That is true, Mr. MacIntyre, based on what I testified to as to normal routes, and in tariffs that are on file with the Commission.

By Mr. MacIntyre:

Q. Is it your testimony now that in your compilations you do not have railroad rates applicable, and as shown between two points, which can be bettered by water transportation rates, and which are not shown?

A. I gave you examples of those.

Q. I know, but aren't there other examples which are not distinguished in your compilation; and where you merely show the railroad rate, but not the water rate?

A. Well, there might be some. I don't know what they would be, but it is possible that we would make some mistakes.

Q. In those instances, would you not have the lowest applicable rates between those points?

A. Well, if we make a mistake, it is just wrong, that's all.

Q. And you don't know whether you made them or not; is that correct?

A. I don't know.

Q. Now, Mr. Stewart asked you about the effective date of these rate changes. Isn't it a fact, Mr. Donley, that in many instances you know that you have passed information as to effective date of rate changes on to
1295 your subscribers for this rigid steel conduit rate schedule subsequent to the effective date?

Mr. Stewart: Just a moment. Let me get that question.

Trial Examiner Norwood: Read the question.

(Last question read.)

A. That would be, Mr. MacIntyre, just an advance notice that the supplement is coming out. That is a part of our service. If we know definitely that a rate is going to be changed, it is jujst a part of the service to put out a bulletin, depending on what we would think would be the importance of that change.

If it is a very small change, maybe we wouldn't.

Q. And there are also instances where the rate charges have been brought to your attention on such short notice that you were not able to get notice to your subscribers before the effective date?

A. That is a possibility, and we may have cases of that kind.

Q. Don't you think you would have?
A. I would think we would have.

Q. And if you didn't have notice to them prior to the date on which the effective date fell, and didn't get the information through your office to the subscribers until after that date, they wouldn't have that information
1296 for a period of time when rates were effective, which were not already shown by you in your compilations?
A. They wouldn't have it from us, they might get it from some other source.

Q. But if they were using your booklets they would be using the wrong rate for that period of time; is that correct?
A. If they used a rate that was in the book and the rate was wrong, why, they are using the wrong rate.

Q. But if you didn't give them a change for a period of five or ten or fifteen days, and they relied upon your booklet until you did give them the change, they would be using the wrong rate until you gave them the change; is that correct?
A. I am not trying to be funny, but that would be right. If the rate is wrong, it is wrong; that's all.
I don't know what use they make of it. If they have no notice of those changes, unless they come through the bulletin, which is pre-notice, or the supplement itself.

Q. It is not your testimony now that you have always got it to them on time, is it? There have been lapses of time?
A. By the time, you mean when the rate had become effective?

Q. Yes.
1297 A. There are cases when we haven't done it. It is not a credit to the service.

Q. You told Mr. Stewart on cross-examination you had given service similar to these compilations of freight rates just as you have made up for rigid steel conduit manufacturers, to other industries, including the potteries industries.
Mr. Stewart: I am sorry. That is not what I asked him, and that is not what he testified to. I asked him what clients he had other than these particular clients.
The Witness: Excuse me. They are not clients.
Mr. Stewart: Whatever they are.

By Mr. MacIntyre:

Q. You did tell him you did give service for other industries, including the potteries industry?

A. Yes.

Q. And can you tell us, in giving service to that industry, that you also, in that connection, gave service to the party who was the Defendant in the Trenton Pottery case?

Mr. Stewart: I object to that as immaterial.

Mr. Houston: I object to that. This is only one case, your Honor. Our friend is a little enthusiastic.

Trial Examiner Norwood: I think we are getting 1298 off the lot.

Mr. MacIntyre: I thought so when Mr. Stewart asked the question. I thought we were completely off the lot, but I want to know now what corner of the lot we went to.

Trial Examiner Norwood: Objection is sustained.

Mr. MacIntyre: That's all.

Mr. Stewart: That's all.

Trial Examiner Norwood: The witness is discharged. (Witness excused.)

Mr. MacIntyre: We will call as the next witness, Mr. Holly.

Mr. MacIntyre: We have decided to call Mr. Morrow as the next witness, and Mr. Holly will stand aside until we have completed Mr. Morrow.

H. G. MORROW, a witness called by and on behalf of the Commission, having been first duly sworn, testified as follows:

1299 *Direct Examination by Mr. MacIntyre.*

Q. You have stated your full name to the reporter?

A. Yes; H. G. Morrow.

Q. What is your business or occupation, Mr. Morrow?

A. I work for Spang Chalfant in the capacity of management of sales of stand pipe and conduit.

Q. How long have you occupied that position?

A. One year.

Q. How long?

A. One year.

Q. And what did you do previous to that?

A. I was associated with the Central Tube Company.
Q. In what capacity?
A. Vice president in charge of sales.
Q. For what period of time, Mr. Morrow?
A. Approximately 1928 until March, 1940.
Q. And were you connected with the rigid steel conduit steel industry previous to that?
A. Yes, sir.
Q. In what capacity and with whom?
A. Well, my whole business life has been with Central Tube. Central Tube went into the rigid steel conduit business, I think, in 1912.
Q. In what capacity were you with the Central Tube from 1912 to 1928?
1300 A. Oh, various capacities; clerk, then a road salesman, then getting into the administrative end of the sales.
Q. Well, during that period of 1912 to 1928, you represented Central Tube at meetings of associations; members of the rigid steel conduit manufacturing industry, didn't you?
A. I wouldn't say so. From the period of 1912 when we first started in the conduit business, we had a manager of conduit sales and he ran that end of the business. As a matter of fact, then, we got another one and he ran the show until about 1930 or 1931, when he resigned.
Q. Well, do you recall attending meetings of associations of members?
A. Yes, I attended meetings, but invariably the greater attendance was by the manager of conduit sales.
Q. Well, those meetings that you did attend, would you say you were representing Central Tube at those meetings?
A. Yes, sir.
Q. Will you name those associations that you can recall, where you attended the meetings as a representative of Central Tube; beginning at the first?
A. That is a large order, sir.
Q. Do you recall attending meetings of the members of the Associated Manufacturers of Electric Supplies, Rigid Conduit Section, as a representative of Cen-
1301 tral Tube Company?
A. I probably did, yes, sir.
Q. Do you have a recollection that you did?
A. Yes, I attended various meetings.
Q. And do you have a recollection of attending meet-

ings of the Rigid Conduit Section of the National Electrical Manufacturers Association?

A. Yes, a few.

Q. As a representative of Central Tube?

A. Yes, sir.

Q. And do you recall having attended meetings of the Rigid Steel Conduit Association?

A. Yes, sir.

Q. As a representative of Central Tube?

A. Yes, sir.

Q. What was the date that you last attended meetings of such organizations as a representative of Central Tube? That is, how long before the discontinuance of the business of Central Tube Company?

A. Well, that was discontinued in February, 1940. Spang Chalfant took over the latter part of February, or the early part of March.

Now, I can't tell the exact dates prior to that time when I did attend meetings, but your minutes would probably show that.

1302 Q. Do you recall that you were elected and served as a temporary chairman for the rigid steel conduit industry in 1939?

A. Yes, sir.

Q. And at the time that you served in that capacity, you were representing Central Tube Company, weren't you?

A. Yes, sir.

Q. What was the nature of your duties in that position, Mr. Morrow?

A. As temporary chairman, I called the meetings, or had the meetings called, and I just kept a semblance of order in the meetings. The duties of any chairman.

Q. And how long did you serve in that position?

A. I think about one meeting.

Q. Over what period of time did your service run; that is, that period of time during which that meeting fell?

A. Well, as I recall it, we were having difficulty in getting anybody to accept a permanent chairmanship, and, therefore, at any time there was a meeting, a temporary chairman was nominated for the succeeding meeting, and we kept changing.

Q. You had previously served as a member of the Board of Directors of the Rigid Steel Conduit Association, hadn't you?

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A. Yes, sir.

1303 Q. Do you recall at a time when you were serving in that capacity, Mr. I. A. Bennett was Chairman of the Board?

A. Yes.

Q. And Mr. J. M. Barton was also a member of the Board?

A. Yes, sir.

Q. Mr. Lawrence R. Quinn was also a member of the Board?

A. Yes, sir.

Q. And Mr. H. S. Walker was a member of the Board?

A. Yes, sir.

Q. And Mr. A. E. Newman was a member of the Board?

A. I am not sure whether A. E. Newman was ever a member of the Board or not.

Q. Is it your testimony now, Mr. Morrow, that you do not recall of Mr. Newman holding any official position in the Rigid Steel Conduit Association?

A. That is my immediate recollection.

Q. That he didn't hold any?

A. That's right.

Q. Do you have any recollection of any official of the General Electric Company, or the General Electric Supply Corporation holding any position as official with the Rigid Steel Conduit Association at any time during your connection with it?

A. Mr. Newman was always a representative of General Electric Company. The Supply Corporation

1304 never had a representative.

Q. It is your testimony you have no recollection of Mr. Newman ever having served in any official position.

A. That is my recollection. I would like to check that and make sure. I know that he attended meetings.

Q. Meetings of the Board of Directors?

A. Of the Association.

Q. What did the Board of Directors do; the Board of Directors of the Rigid Steel Conduit Association; as you saw its operation, Mr. Morrow? Did it determine when meetings were to be held?

A. Well, they probably, as a Board, had something to do with that, yes.

Q. And where they were to be held?

A. Yes.

Q. And where the notices would be sent to certain members as a call to the meeting?

A. Yes.

Q. And what should be placed on the agendum for discussion at the meetings?

A. Yes, sir.

Q. Have you, since you became associated with the Spang Chalfant, Inc., attended any meetings of the Rigid Steel Conduit Association?

A. No, I attended the meeting of the rigid steel
1305 conduit industry in your office.

Q. I am speaking now of the Association.

A. No. No, sir.

Q. Have you attended any meetings of members of the rigid steel conduit industry since you became connected with the Spang Chalfant, other than the one to which you made reference?

A. No, sir.

Q. You haven't been in a gathering with any of the other representatives of other manufacturers, except on that occasion since you were temporary chairman of the Rigid Steel Conduit Association?

A. Well, that's a very general question, Mr. MacIntyre. I will answer that question this way: I was in Detroit this past week attending the National Electrical Wholesalers Association, and, naturally, we saw, without any formal meeting, three or four competitors would meet in the lobby and discuss. That kind of meeting, surely.

Q. You and a number of other representatives of rigid steel conduit manufacturers were in attendance at a meeting of the National Electrical Wholesalers Association in Detroit last week; is that correct?

A. I didn't say that, sir. I said that a number of representatives were there and attending that meeting,
but without any call of a meeting, or any formality
1306 of a meeting, various representatives of the industry
did meet each other and talked in the lobby of the hotel.

Q. How frequently have you attended such meetings as that one, since you became connected with Spang Chalfant?

A. Oh, a similar meeting at Hot Springs this spring, where the manufacturers were there; no formal meeting, but you run into these competitors as you go around; trying to take your customers, and so on.

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Q. And did you attend such a meeting as that one in 1940, after you became connected with Spang Chalfant?

A. Yes. The October meeting, fall meeting of the National Electrical Wholesalers Association was held in Pittsburgh that year. I spent about a half day around the lobby.

Q. What, if anything, have you had to do as sales manager of the Spang Chalfant Company and as vice president in charge of sales of the Central Tube Company with the handling and the decision to issue price cards?

Mr. McDaniel: If your Honor please, let me suggest we take up one topic first, instead of two.

Can't you confine your question to the one topic first, and then take up the others?

Mr. MacIntyre: I would like to have him answer that question with respect to one company and then with respect to the other.

1307 Trial Examiner Norwood: Read the question.

(Last question read.)

Trial Examiner Norwood: Answer the question.

A. When I was with Central, naturally, any card that was issued had my approval, and I instructed it to be issued. The same position goes for Spang Chalfant.

By Mr. MacIntyre:

Q. You saw each card before it went out and knew the reason for the issuance of a card by either of those companies before it was issued; isn't that correct?

A. Yes, sir.

Q. Can you tell us why that Central Tube Company issued its card No. 76?

A. I made it a habit, each time a card was issued, to dictate a memorandum pertaining to that particular card. Our counsel has that memorandum. I will be glad to read it.

Q. I would like for you to give us what you can in the way of an answer to my question, without any reference to any papers.

A. I don't want to be impertinent, but when I have the facts there, that were fresh in my mind, and dictated, I don't see why I should just make a stab at it now.

Mr. MacIntyre: Read the pending question.

(Last question read.)

Mr. Stewart: As I understand it, Mr. Examiner,
1308 what the witness suggests is: if he has his memorandum, he can give him the facts, and without it, he doesn't undertake to remember the facts.

Mr. McDaniel: I have the memorandum here if your Honor wants to give the witness permission to refresh his recollection from it.

Trial Examiner Norwood: I think counsel, if he wants to test his memory, without the data, has the privilege to do so.

Mr. MacIntyre: There can be no objection to using a card to refresh myself so that I may ask questions of the witness as to various reasons why they were issued, but I wouldn't like at this point to give the witness the memorandum from which to read while he is on the stand.

Mr. McDaniel: Suppose the witness wants to refresh his recollection from it; he didn't intend to read the written statement. He has no independent recollection.

Trial Examiner Norwood: I shan't interfere with the counsel who is now examining the witness.

By Mr. MacIntyre:

Q. Mr. Morrow, I am showing you Commission's Exhibit No. 69-A to D, in evidence here, as Central Tube Company price card No. 69; it carries on it a statement that is especially true on the page marked 69-A, of the manner in
1309 which delivered price quotations should be determined. Do you recognize that method that is stated on there as one that was used by the Central Tube Company on its price cards in informing its customers how to determine delivered costs?

A. Yes, sir.

Q. You used that method yourself ever since you have been in the conduit industry in determining delivered costs?

A. Yes, sir.

Q. You are acquainted with the fact that other manufacturers, have, throughout that period of time, in the rigid steel conduit industry, issued cards that provided for figuring delivered price quotations in exactly the same manner?

A. Yes, sir.

Q. You are acquainted with the fact that Spang Chalfant, Inc., has issued price cards, since you have been with

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it, which provide on their faces for figuring prices in exactly the same manner; is that correct?

A. Yes, sir.

Q. Now, referring again to Commission's Exhibit 69-A, there is a reference to the figuring of delivered prices, and in that connection the direction to add freight. I show you now Commission's Exhibit 698-A to N, and ask you to state if that is a booklet or compilation of freight
1310 rates such as Spang Chalfant has been using in following out those directions in adding freight to a basing point price?

A. Yes, sir.

Q. And it sent duplicates of this Commission's Exhibit 698-A to N to its customers, and to the trade generally?

A. Yes, sir.

Q. For them to use in figuring prices in that way?

A. Yes.

Q. Now, with your knowledge of that method of figuring prices, and with your knowledge of your competitors' use of that method in figuring delivered price quotations, will you please tell us whether or not that, as to the card, price card which was currently in effect on January 25, 1941, if you need it in the manner that is provided for on the face of it, in figuring delivered prices, how you or they would get any different result at any destination?

A. No; they would be identical.

Q. Do you know of any other method that you and your competitors could use that would give you any more certainty as to identical delivered price quotations or uniformity for all of the sellers of rigid steel conduit at any particular destination?

Mr. McDaniel: I object to it. It is argumentative and speculative, both.

Mr. MacIntyre: I ask that the question be read,
1311 I am asking for this witness' knowledge.

Trial Examiner Norwood: He contends that he established certain results, and this is a question directed to whether or not those results could be obtained by other methods.

Mr. McDaniel: With all deference to your Honor, that is not the question as I heard it. He wants to know whether this witness can describe any other method different from the one that we are now talking about, which would give any more certainty of that result than this one.

Now, I say, in the first place, that is argumentative; and in the second place, it calls for an oration of the witness' imagination; and is not relevant—

Trial Examiner Norwood: Didn't this witness testify that the results were identical?

Mr. Stewart: That's right.

Mr. McDaniel: That is what he said. Now, if there can be any more certainty than that, I think you are just arguing about it.

Trial Examiner Norwood: I believe if counsel would reframe the question, it would be all right.

Mr. MacIntyre: May we have the question read so we may know what it is?

Trial Examiner Norwood: Read the question.

(Last question read.)

1312 Mr. McDaniel: I press my objection.

Trial Examiner Norwood: Objection is sustained.

By Mr. MacIntyre:

Q. Do you know of any method of figuring delivered price quotations, Mr. Morrow, which you and your competitors have used, which ever gave you the degree of certainty as to uniformity as the method which you have just described?

Mr. McDaniel: I make the same objection. The question is just changed from the present tense to the past tense. It is the identical question. It has all of the objectionable features that the first question had.

Trial Examiner Norwood: He used the term more certainty.

Mr. McDaniel: Yes.

Trial Examiner Norwood: And in this he is asking if there is any method that would give the same degree of certainty. I think there is some difference there.

Mr. McDaniel: Well, Mr. MacIntyre is still making an argument. It is purely an argumentative question. That, I think, is the principal evil of it.

Trial Examiner Norwood: He asks in this case whether or not he and his competitors had employed a method.

Mr. McDaniel: As I understand it, your Honor, we are not here discussing any price method other than the one that is involved in this case. Whether some other

1313 pricing method, which has never been used in the industry—

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Trial Examiner Norwood: I think counsel's objection should be sustained. I think you are going into a method not charged in the Complaint, and it isn't a question of whether they could possibly have employed some other method. The question is did they employ this method.

Mr. MacIntyre: This question now pending is not whether they could have, but it is a question as to whether, to his knowledge, they employed any other method that gave them that degree of certainty. It is a question: "Have you?" It is not a question of: "Could you?" May we have the question read?

Trial Examiner Norwood: I think that counsel's objection should be sustained on that. I don't think we need go into some other method.

Mr. MacIntyre: If your Honor please, this witness has represented companies, both of which are Respondents here; he has represented them for a quarter of a century or more; they have used, as he has testified, this method that is alleged in the Complaint to be an unlawful method; he has told us what the result of the use of that method is, I am now asking him if he has ever used any other method. And I think we are entitled to know whether or not he has used this method exclusively, or some other method.

Mr. McDaniel: If the question is limited to that, 1314 I will withdraw the objection.

Trial Examiner Norwood: Does the Complaint allege other trade restraining methods in there?

Mr. MacIntyre: No, it does not. It alleges the use of this one.

Trial Examiner Norwood: I thought so.

Mr. MacIntyre: There are, of course, different ways of finding out whether or not they used any other one than this.

Trial Examiner Norwood: It is vain to receive that unless the Complaint charges it. I will sustain the objection. Go ahead.

By Mr. MacIntyre:

Q. Mr. Morrow, I show you Commission's Exhibit 328, which is a tabulation of bids opened by the Panama Canal Commission September 26, 1939, as submitted to it by a number of conduit sellers and conduit wholesalers, one of which is the Central Tube Company, showing a figure of

$4,884.90, the same figure being shown in that tabulation for a number of other sellers; can you tell me how you and the others that submitted that price arrived at it so as to get the uniformity that appears there?

A. Yes. In submitting our bids here, we used the published price, added the appropriate freight rate, freight cost, and that is the result.

1315 Q. That is the only answer or explanation that you can give us as to why those are the some in that tabulation; is that correct?

A. Yes.

Q. Would your answer be the same, Mr. Morrow, as to such a showing as that, as to any other set of bids in which your company participated?

A. Well, I can only repeat that our company, when submitting a bid, takes its published price, then in existence, adds the appropriate freight rate, and that is how we arrive at our result.

Q. That is, in submitting these bids used, to your knowledge, you have never used anything other than your method of figuring prices which you have heretofore described to us?

A. Once in a while we did it that way, and then cut off 5% when we wanted an order, which some of those fellows did on that tabulation, apparently.

Q. When you do that, you don't get the same price as your competitors, do you?

A. No, sir.

Q. When any set of bidders in submitting bids to the Federal Government, or in making price quotations to the general trade, do not adhere to the basing point price plus the freight from Pittsburgh, if Pittsburgh is applicable, they get different prices; is that correct?

1316 A. I am afraid that I am a little confused in your question.

Mr. MacIntyre: Please read the question.

(Last question read.)

A. I told you how, Mr. MacIntyre, our company arrives at the delivered prices. How our competitors figure them, I don't know.

Q. If you figure it that way, and they figured it some other way, you would get different results?

A. As that tabulation shows; yes, sir.

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Q. When you don't use that method, and some one of those did, you would have a different result from them?

A. No. If we used our method and other manufacturers followed their published prices and terms, there would be no variation.

Q. But when they do not adhere to the published basing point prices, and the prices in term, they get various prices?

A. You have a tabulation such as you have there, yes, sir.

Q. Now, in all of your experience in the rigid steel conduit industry, have you known either of the companies you have represented, or any other company with which either of them have competed, to have issued any price list providing for sales FOB their mill, without any reference to the use of such a method in figuring de-
1317 livered price quotations?

A. We always quoted—our firm always did quote delivered prices.

Q. Have you ever seen or otherwise secured any knowledge of the issuance of any price lists by your companies, or any other company in the industry on any other basis than a delivered price basis?

A. No, sir.

Q. Isn't it a fact, Mr. Morrow, that in the sale of conduit on a delivered price basis, figured from Pittsburgh, on a Pittsburgh base, and Chicago, on a Chicago base, whichever is applicable, that any seller covering the territory of both of those bases, will be getting a greater mill net from customers located near his mill than from customers located at greater distances.

A. That is true.

Q. You can't escape that, can you, as long as you use the method?

A. No.

Q. Mr. Morrow, I again show you Commission's Exhibit 698-A to N, inclusive, and will ask you to state whether or not you can use any information as is shown in that booklet on shipments from your mill, or
1318 whether you merely use that in figuring the prices as you have determined it and described to us?

A. Yes. This book, Mr. MacIntyre, is full of information, full of freight rates which we can use; yes, sir.

Q. Is it possible to use that for shipping information,

that is, for the securing of freight rate information for shipping purposes—

A. Yes.

Q. —for shipments from any other points other than Pittsburgh and Chicago?

A. Will you please repeat that?

Mr. MacIntyre: Please read that last question.

(Complete question read.)

A. These are the freight rates, Mr. MacIntyre, from Pittsburgh and Chicago, and to various destinations. Our plant is in the Pittsburgh district, so naturally this information is very valuable to us.

By Mr. MacIntyre:

Q. For shipping purposes, in addition to pricing purposes which you have told us about?

A. Would you clarify your question, please, by explaining what you mean by "shipping purposes"?

Q. For making out bills of lading, in determining freight charges which are to be included in bills of lading, is it your testimony that you use that compilation 1319 for that purpose?

A. Well, I don't make out the bills of lading, and anything of that kind. But I would say that unless it was a most unusual case, these published freight rates from Pittsburgh are accurate and could be used, as you term, shipping information.

Q. But you don't know whether your company actually uses them for that purpose in making out bills of lading?

A. If you mean do I know whether our shipper refers to this booklet when he writes out a bill of lading, I don't know. I will explain that by saying that when we send an order to the mill, we instruct them to prepay the freight at a given freight rate, so that the shipper doesn't have to look it up at all. The freight rate is on the order.

Q. And, now, will you tell us, if you can cite to us any information in that booklet, Commission's Exhibit 698-A to N, which could be used for shipping purposes, for shipping from any point other than Pittsburgh and Chicago?

A. Well, our plant being located in Pittsburgh, we can use this. So far as speaking for other manufacturers is concerned, I am not qualified.

Q. You have had considerable experience in the industry, and with managing shipping departments, that is,

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under your jurisdiction; can't you tell us whether or not you can locate any information in there that you
1320 could use for making the shipment from any other point than Chicago and Pittsburgh?

A. Well, there is a minimum carload rate in there to various points. That is one item that could be used.

Q. Well, I am talking about from points other than Pittsburgh and Chicago.

A. I will have to say no, to that question, because I am not qualified to answer it.

Q. Well, referring again to that Commission's Exhibit 698-A to N, do you know where your company secures such booklets?

A. Yes, sir; Mr. Donley.

Q. That is the Spang Chalfant Company?

A. Yes.

Q. And do you know that Central Tube Company also secured such compilations during the time you were with them from Mr. Donley; is that correct?

A. Yes, sir.

Q. Mr. Morrow, do you recall a meeting that you attended here in Pittsburgh at the club of you and other manufacturers of rigid steel conduit, about March 15, 1936, following which, on the next day, there was a reduction in prices by 20%?

Mr. Stewart: I suggest, in view of the fact that the minutes are in evidence, there can be no doubt about
1321 the date, that the minutes be produced, or that counsel concede that the meeting was on March 17th—March 9th, 1936, so there can be no doubt about the date. The minutes are here, and let's not have any difficulty about the date.

Trial Examiner Norwood: I don't think that would prevent him from getting that information from this witness orally.

Mr. Stewart: If he remembers. That is the only thing about it.

Mr. MacIntyre: I believe my question went to that point.

Trial Examiner Norwood: Read the question.

(Last question read.)

A. Is that the year of the flood?

Mr. Stewart: You will have to ask Mr. MacIntyre.

By Mr. MacIntyre:

Q. I think they had a flood in Pittsburgh that year.

A. I hesitate to answer that question. I remember we had a meeting about that time, but it is a meeting that is all a matter of record, and I think the minutes show that I was there; and 1936 is five years ago, and I would like an opportunity to refresh my memory by seeing the minues, before I—

Q. Do you recall, without referring to the minutes, that a representative of the General Electric Com-
1322 pany was present at that meeting? Don't you?

Mr. Stewart: You mean without regard to the date, now?

Mr. MacIntyre: The meeting that was held during March, 1936, at the time of the flood.

Mr. Stewart: All right.

A. I wouldn't be positive, no, sir.

By Mr. MacIntyre:

Q. Is it your testimony that you have no recollection of a representative of that company being present at that meeting?

A. My testimony, Mr. MacIntyre, was that I am not positive.

Q. Well, to the best of your recollection, there was such a representative present; is that correct?

A. If you would let me see the minutes, I could answer you yes or no.

Mr. Stewart: March 17th is the date.

By Mr. MacIntyre:

Q. I show you Commission's Exhibit 7, which is the minutes of a meeting of the Rigid Steel Conduit Association, March 11, 1936.

A. Yes. General Electric was represented by Mr. Newman.

Q. Can you recall that at that meeting Mr. Newman informed you and the others present that if nibbling at price cards which had been put out was not stopped,
1323 that there would be a drastic revision in price, and one immediately?

A. No, sir.

Q. What did he say in that respect?

A. I don't recall that he said anything in that respect.

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Q. Is it your testimony, Mr. Morrow, that there was no discussion of that character that took place at that meeting between Mr. Newman and the others present?

A. I will confine it by saying that I have no recollection of Mr. Newman discussing it with me.

Q. Well, it came to your attention that he discussed it with others present; is that correct?

A. No, I didn't say that, sir.

Q. What is your answer to that question?

A. I said that to the best of my recollection Mr. Newman did not discuss it with me. Whether he discussed it with other members or not, that is problematical.

Q. Weren't you told by those present that he did discuss it with other members present?

A. Oh, sure—I don't mean that, that he discussed it with anybody, but there is no question but at that time the market was so erratic and cut so drastic that a discussion arose on the situation; that it might naturally come about.

Q. You do have a recollection that a discussion about that ragged situation took place at that meeting?

A. I remember at that time the situation was very ragged.

1324 Q. And that it was discussed at the meeting?

A. I can't give you a definite recollection on it; whether it was discussed at the meeting or not.

Q. You were informed that it was discussed at the meeting by those who were in attendance?

A. Probably so, yes.

Q. And that it was threatened by some of the large producers that the price would be cut drastically if the nibbling or ragged condition wasn't cleared up; isn't that correct?

A. Well, we have all had dealings, each manufacturer, from time to time, that when his toes were trampled on by some competitor, that he would go out and do something drastic just to get back at him; certainly.

Q. And that's what you understood was discussed at that meeting; is that correct?

A. I have told you that I have no definite recollection of a discussion at that meeting.

Trial Examiner Norwood: He didn't ask you about your particular recollection. He asked you if that was your understanding. Can't you answer that question?

The Witness: Will you repeat the question, please?

Trial Examiner Norwood: Read it.

1325 (Last question read.)

The Witness: Will you read the question before that, please?

(Question read.)

A. I have no recollection of it, but what I knew of conditions at this time, I will admit that there probably was such a discussion. Is that satisfactory to you, Mr. MacIntyre?

By Mr. MacIntyre:

Q. Is it your testimony that you can't do any better than the word "probably" in that statement, Mr. Morrow? Don't you recall an understanding that you have had that such a discussion did take place at that meeting?

A. Well, I have heard threats many times throughout my experience with conduit business of very drastic reductions on account of some fellow nibbling here, as you term it, and nibbling there; so I don't really recollect any serious discussion at that meeting about a drastic cut in price.

Q. Let us take off the word "serious" and just leave it down to the discussion. What do you recall about the discussion?

A. Well, I would term a serious discussion where a meeting as a whole talked the thing over and the whole threat was made. No, I have no recollection now of that being done.

1326 The General Electric may or may not have told individual members: Well, if this is not cleaned up, I am going to do so and so.

Q. Didn't you understand from those in attendance at that meeting that that was told to at least some of them that were present?

A. Yes, sir.

Q. And you do know that within a very short time thereafter, to-wit, on or before March 17, 1936, that the price was broke by as much as 20% and was made 27% by Youngstown Sheet & Tube Company? You recall that, don't you?

A. What was the card number on that, please, sir?

Q. 72 by Fretz-Moon. Yes, 72.

A. If I may refer to my memorandum on that, that

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counsel has, I can give you exactly what happened at that time.

Q. Well, I would like to ask you the question: If you have knowledge now that the break in the price which was made on Card 72 within a matter of a week after that meeting amounted to as much as 25%, or not, as published by Youngstown Sheet and Tube Company?

A. I believe that is true. There was a very drastic cut at that time, and, in my opinion, was fully justified by the general market conditions at what specific building contracts had gone for.

Trial Examiner Norwood: Cross-examination.

1327 Mr. McDaniel: I have no questions.

Mr. Austin: No questions.

Mr. Stewart: I have no cross-examination.

Mr. MacIntyre: That's all, Mr. Morrow.

Trial Examiner Norwood: The witness is discharged.

(Witness excused.)

Trial Examiner Norwood: We will adjourn at this time until 9:30 tomorrow morning.

(Thereupon, at 4:30 o'clock P. M., an adjournment was taken to reconvene at 9:30 o'clock A. M. October 21, 1941.)

1330 PROCEEDINGS.

Trial Examiner Norwood: The hearing will come to order.

Pursuant to adjournment, the hearing in Docket 4452 is now reconvened in courtroom No. 4 of the Federal Building, Pittsburgh, Pennsylvania, at 9:30 o'clock A. M., Eastern Standard Time.

1338 This proffer of Mr. MacIntyre's that he made yesterday morning for the purposes of clarifying the record and including exhibits which were heretofore received, but which the record does not show in some cases very clearly to have been received, are now received in evidence. The Respondents have the benefit of all objections heretofore made to these exhibits, and general objections. And in that connection I cite you to pages 173, 439, 440, 865, and 869.

The exhibits now received are commencing with Exhibit 79-Z-23 to Z-34.

All of these are Commission's Exhibit 79, and I am merely hereafter repeating the page numbers.

Z-67 to Z-70, Z-71 to 74, Z-75 to Z-91, Z-155 to Z-167, Z-168 to Z-179, Z-180 to Z-188, Z-189 to Z-202, Z-233 to Z-246, Z-92 to Z-102, Z-103 to Z-112, Z-113 to Z-122, Z-123—

Mr. MacIntyre: Just a moment. The last exhibit is Z-113—what was the next one?

1339 Trial Examiner Norwood: Z-12 to Z-125, Z-126 to Z-153.

COMMISSION'S EXHIBITS NOS. 79-Z-23 to Z-34, 79-Z-67 to 79-Z-70, 79-Z-71 to 79-Z-74, 79-Z-75 to 79-Z-91, 79-Z-155 to 79-Z-167, 79-Z-168 to 79-Z-179, 79-Z-180 to 79-Z-188, 79-Z-189 to 79-Z-202, 79-Z-233 to 79-Z-246, 79-Z-92 to 79-Z-102, 79-Z-103 to 79-Z-112, 79-Z-113 to 79-Z-122, 79-Z-123 to 79-Z-125, Z-126 to Z-153, were offered and received in evidence.

Mr. MacIntyre: Was there a ruling on Commission's Exhibit 77-A to 77-Z-5?

Trial Examiner Norwood: Have you offered that yet?

Mr. MacIntyre: I offered those in evidence. While I offered all of those, the record only shows that I offered the first page of that freight rate booklet.

Trial Examiner Norwood: Well, let the record show that Commission's Exhibit 77-A to 77-Z-5, including the pages following the cover page, is received.

COMMISSIONS EXHIBITS NOS. 77-A TO 77-Z-5 were offered and received in evidence.

Mr. MacIntyre: As I understand it, counsel for Respondents make no objections to either Commission's

1340 Exhibit 79, which you have just received, or to this Commission's Exhibit 77, on which you have just made the ruling. I understood Mr. Stewart to state that to be the case yesterday afternoon.

Trial Examiner Norwood: It was stated they make no objection, but they are not precluded from correcting errors at any time.

Call your witness.

Mr. MacIntyre: We will call as the next witness at the instance of the Commission, Mr. Holly.

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GEORGE F. HOLLY, a witness called by and on behalf of the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

Q. What is your name?
A. George F. Holly.
Q. What is your business and occupation, Mr. Holly?
A. Manager of conduit sales of the Youngstown Sheet & Tube Company of Youngstown.
Q. How long have you held that position?
A. About 25 years.
Q. Over what territory does the Youngstown Sheet & Tube Company make sales of rigid steel conduit?
1341 A. Entire United States, and, also, export.
Q. When you speak of export, you include, do you, sales and shipments to the Panama Canal, Porto Rico—
A. Porto Rico, South America; all over the country.
Q. Where is the manufacturing plant of the Youngstown Sheet & Tube Company located; where it produces rigid steel conduit?
A. We produce at Struthers. The pipe is made at Campbell, in Youngstown; brought down to the Struthers Plant to finish into conduit, and we also make conduit in Chicago.
Q. How far from Pittsburgh, Pennsylvania, is Struthers, Ohio?
A. Offhand, I would say about 60 miles.
Q. Of course, your statement about making sales and shipments to all points of the United States would include Pittsburgh.
A. Oh, yes.
Q. And Youngstown?
A. That's right.
Q. And Chicago, St. Louis?
A. That's right.
Q. New York City?
A. Correct.
Q. Albany?
1342 A. Correct.
Q. Morristown, Pennsylvania?
A. If we had a customer there, I suppose we would ship there; if we could sell them.

Q. Philadelphia, Pennsylvania?
A. Correct.
Q. Wheeling, West Virginia?
A. Well, if we had a customer.
Q. We have in evidence here, Mr. Holly, the price cards of the Youngstown Sheet & Tube Company as Commission's Exhibit 55, which you and your counsel have submitted to us. You are acquainted with those cards?
A. I am.
Q. And the statements that they contain as to how delivered price quotations are to be figured from them?
A. I know how they are to be figured.
Q. You are acquainted with the fact, are you, Mr. Holly, that other manufacturers and sellers of rigid steel conduit have published cards of a similar nature which provide for figuring delivered prices in exactly the same manner, are you?
A. I believe they have cards similar. There may be some other statements on some that are different from ours. I didn't read them all, but just looking at them—whether they are absolutely alike, I don't know, but—
1343 Q. But you have seen them and you have noted on those cards of your competitors, throughout the period of time you have been with the Youngstown Sheet & Tube Company, that they do contain a provision for figuring prices in the same manner that your cards provide?
A. I would say so.
Q. Have you ever seen any price cards published and distributed by your company or by any manufacturer of rigid steel conduit which provided for prices FOB plant of production?
A. I don't think that I can remember seeing a card, but I made quotations FOB mill; where we make the conduit.
Q. What percentage of the quotations have you made FOB mill?
A. Very small.
Q. You say very small. Would that be 1%?
A. I don't know. We occasionally get inquiries. I wouldn't know what the percentage is, but I would say very small, compared with the delivered price.
Q. Would you say it is one in a hundred?
A. I really have never thought of it, and I wouldn't

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know, without going over our records to see how many we have.

Q. Mr. Holly, I show you Commission's Exhibit 357, which is a tabulation of bids submitted by Youngs-
1344 town Sheet & Tube Company and other sellers of rigid steel conduit, opened November 21, 1939, carrying two columns of bids, Bid A and Bid B showing on the exhibit that the bids for Bid B are FOB factory, and it shows there that the Youngstown Sheet & Tube Company submitted under the column Bid B a price or bid of $8,-229.09. Is that the type of bid that you were just telling us about, that you have in a very small percentage of your quotations made FOB your factory?

Mr. King: Who are those bids to, Mr. MacIntyre?

Mr. MacIntyre: The Navy Department.

A. I couldn't tell you without looking. I couldn't tell you how it was figured. I would have to get the bids out of the file at home and figure the thing back and figure your price. I wouldn't know. By having a total, it wouldn't mean a thing to me, without going back to my files and figures.

By Mr. MacIntyre:

Q. I am not asking you to figure the price or how to figure it. Will you please answer the question?

Trial Examiner Norwood: Read the question.

(Last question read.)

By Mr. MacIntyre:

Q. In other words, is that one of the bids that you made FOB factory, that you recall, in this small percentage
1345 of factory bids?

A. It may be possible that would be one of them. I wouldn't know.

Q. Would you consider that as one of your FOB factory bids about which you were telling us?

A. It may be possible. I just wouldn't know, without getting the papers on it.

Every bid you figure, your figure and bid you get depends where it is going, who it is, and all about it. It depends on what is before me, whether we are interested in securing the business or not; how we figure the price.

Q. This specifies it was FOB factory price you are bidding.

A. That wouldn't necessarily mean if I had another one tomorrow or next day that I would figure it the same way, Mr. MacIntyre.

Q. Irrespective of how you figure, I am asking you the question: do you consider this is one of the FOB factory bids which would be included in this very small percentage of factory bids which you say your company has submitted.

Mr. Gilpatric: I object to that question on the ground the exhibit speaks for itself and it says at Baltimore, Maryland, and the witness has testified that the plant is at Youngstown, Ohio.

Mr. Robison: Struthers, Ohio.

Mr. Gilpatric: I mean Struthers, Ohio.

1346 Mr. MacIntyre: It still says it is FOB factory, and I do not like, even if I must say so at this time, that the witness be prompted as to answering any question I put to him.

Mr. Robison: I resent that comment, Mr. Examiner. The exhibit has been shown, which clearly shows on its face that the quotation was made FOB Baltimore.

Mr. MacIntyre obviously has been trying to trap the witness, through not calling his attention to that, into stating it was a bid FOB their factory.

I resent the comment of coaching the witness.

Trial Examiner Norwood: Let the witness answer the question. The objection is overruled.

Mr. MacIntyre: Read the question.

Trial Examiner Norwood: You remember the question, do you not?

A. Whether that's one of the exhibits.

I couldn't tell you that, because, in the first place, we are competing with other companies, and it would make a difference to me of where I was bidding and who I was bidding to.

I couldn't tell you whether that was one of the bids or whether I would do the same thing the next minute or not. I couldn't tell you that.

By Mr. MacIntyre:

1347 Q. I submit, Mr. Holly, that doesn't answer the question I put to you.

You have told me in a very small percentage of your bids you have submitted FOB factory, or made quotations FOB factory.

I am asking you if in that small percentage of the FOB factory bids you would consider this so-called FOB factory bid to be one?

A. Just as I say, I don't know. I don't know how we figured that bid. I don't know a thing about it, without getting all my papers.

Trial Examiner Norwood: Did the FOB mill bids that you made equal the Pittsburgh base?

The Witness: In the first place, there are seven or eight brands of conduit coming out of the Pittsburgh district. Our competition all the time has been, over the period of years, Pittsburgh.

Every time I go out to bid against somebody I have got to take into consideration my competition is Pittsburgh.

Trial Examiner Norwood: When you bid an FOB mill price, do you bid the Pittsburgh base?

The Witness: I may, because I have got to absorb a certain amount of freight between Struthers and Pittsburgh. When I ship anything east I have got to absorb all that freight. Anything going into the eastern market—

1348 Trial Examiner Norwood: I am talking about selling FOB mill. You don't absorb anything there?

The Witness: No.

Trial Examiner Norwood: You just sell FOB mill, and I am asking you whether, when you do that, you sell on the Pittsburgh base or whether you sell at a price which is calculated from some delivered price by deducting the freight. Now, which is it?

The Witness: I would figure from Struthers, figure my freight from Struthers to the delivered point, but yet I have got to keep in mind that Pittsburgh is my competition.

Trial Examiner Norwood: Go ahead.

By Mr. MacIntyre:

Q. In so doing, Mr. Holly, you take the delivered price quotations that you and your competitors have made, at the destination involved, that is, where the delivery is to be, on the products on which you are to bid, and deduct the freight from such destination back to Struthers; that's what you mean, in getting your FOB mill price?

A. That depends. I may do it that way.

Q. Isn't it a fact you have figured so-called FOB mill prices that way?

A. In some instances, we may have.

Q. Do you know of any instance where you have 1349 figured them any other way?

A. That depends. If the competition is such that I wanted a piece of business, why, Pittsburgh or any other price wouldn't make any difference to me, because I would make a price to get that piece of business.

Q. Can you cite us any instance where you have submitted FOB mill bids in any other way than the first way I have outlined to you?

A. I can't tell you right now, without going back into our records.

Q. You have no recollection—

A. Not right off, at the minute, because I don't carry that in my mind.

Q. In figuring these prices on the basis of FOB point of delivery, you take your price cards, which are in evidence here, I believe, as Commission's Exhibit 55, add to those your freight rates as shown by the freight rate bulletins of your company, in connection with the freight addages, or delivery charges, as shown by Commission's Exhibit 73-B, the Youngstown delivery book in evidence here; is that correct?

A. That is correct.

Q. And where have you secured your freight rate information?

A. From our regular freight bulletins, which you 1350 have a copy of.

Q. Where do you get the freight rate bulletins?

A. We have been getting some of them from Donley.

Q. How long have you been securing them from Mr. Donley?

A. I really couldn't tell you that. I don't know. I never saw Mr. Donley. I don't know a thing about

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him except he gets the freight rates together, and we use them.

Q. Can you tell us approximately how many years—

A. I couldn't tell you. I have no idea.

Q. You have seen freight rate bulletins which have been distributed and used by your competitors that carry on the cover of it. Prepared by the Rigid Steel Conduit Association, have you?

A. I may have. I never pay much attention to the other fellow's sheet. I use our own.

Q. I refer specifically to Commission's Exhibit 365. You have seen such bulletins as those?

Mr. Stewart: What is the question?

(Last question read.)

A. I never saw one of these. We don't use a bulletin like this.

By Mr. MacIntyre:

Q. It is your testimony you never used one like that?

A. Not like this. We don't use a thing of that kind.

Q. Whether you have used it or not, is it your testi-
1351 mony you never saw anything like that?

A. I don't remember seeing anything like this; with the cover on it like that, marked "Rigid Steel Conduit Association."

Q. Would you say you started securing bulletins from Mr. Donley in 1937?

A. Whether we did secure them from him?

Q. Yes.

A. I don't know.

Q. Since 1937?

A. I am not sure of that.

Q. Will you tell us whether or not it has been three years?

A. We have had some from Mr. Donley, but just when, I don't know.

Q. For as many as three years?

A. I don't know that. It may be possible.

Q. Four or five?

A. I couldn't tell you that, Mr. MacIntyre.

Mr. MacIntyre: I would like to have some documents marked for identification.

(The documents above referred to were marked, for identification, "Commission's Exhibits 699-A to O, 700-A to O, 701, 702, 703.")

By Mr. MacIntyre:

1352 Q. Mr. Holly, I show you Commission's Exhibit, for identification, 701. Do you recognize that, and, if so, tell us what it is. (Handing document to witness.)

A. That's a freight bulletin.

Q. Of your company?

A. Our name is on it. It must be our company.

Q. Do you remember when you put out the freight bulletin, of which that is a duplicate?

A. No, I couldn't tell you. That's back in 1933. I wouldn't remember that.

Q. You have no recollection of the method used in preparing that booklet?

A. No.

Q. Do you know whether or not you were preparing freight rate bulletins of that character in your office at the time this was prepared?

A. No, I couldn't tell you that.

Q. There is no question in your mind but what you have used all bulletins that your company has published?

A. Naturally, if we publish them—

Q. And used them in the manner outlined?

A. If we publish them, we probably use them.

Q. And used in the manner outlined by you here, in figuring delivered price quotations?

1353 A. We did in some instances, because when you talk about using them, you are talking about quotations that we make now on conduit pipe?

Q. Yes.

A. If we make a quotation, Mr. MacIntyre, a quotation don't mean, necessarily, that that is the price—no matter how we figure it, that that is the price we actually quote, because over the period of years, it is the competition that counts with us; the competition we are up against, and when the competition is such that the bulletin, the price that is put out, that is figured in that way, don't necessarily mean that is the selling price. I can't—

Q. I am talking about your price quotations on your published card.

Mr. Stewart: Just let him finish his answer.

A. If the price—

Mr. MacIntyre: Just a moment. I asked the witness a question. I ask the question be read and then the answer to the question be read and see whether or not we have an answer.

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Trial Examiner Norwood: Read the record.

(The record was read by the reporter as follows: "Q. And used in the manner outlined by you here, in figuring delivered price quotations? A. We did in some instances, because when you talk about using them, you are talking about quotations—")

1354 Mr. MacIntyre: That is the answer to the question. If he has done something else in his lifetime, we can hear about that in response to further questions, or on cross-examination.

Mr. Gilpatric: I submit, your Honor, the witness is giving an explanation in answer to the question.

Trial Examiner Norwood: Yes, but I want to ask the witness not to give explanations. Your counsel is here. You may have every confidence in these able counsel to give you an opportunity to make any explanation you want, but when the other counsel is examining you, you make a direct answer, please, sir.

The Witness: Mr. Examiner, when he asks me how we figure the price, I can go only so far, because that is not the finished price. That is not the finish of the quotation.

Trial Examiner Norwood: I think you have told him that.

The Witness: That is not the finish of the thing.

Trial Examiner Norwood: Ask him another question.

By Mr. MacIntyre:

Q. You have used this bulletin, Commission's Exhibit, for identification, 701, in that connection, have you; that is, in figuring delivered price quotations?

A. In part of the quotation, yes.

1355 Mr. MacIntyre: I offer this bulletin in evidence, if the Court please.

Trial Examiner Norwood: How is it marked?

Mr. MacIntyre: As Commission's Exhibit 701, for identification.

Trial Examiner Norwood: Is there any objection?

Mr. Gilpatric: No objection.

Trial Examiner Norwood: Received in evidence as Commission's Exhibit 701.

COMMISSION'S EXHIBIT NO. 701 was offered and received in evidence.

Trial Examiner Norwood: Off the record.

(Discussion had off the record.)

Trial Examiner Norwood: On the record.

By Mr. MacIntyre:

Q. Mr. Holly, your price cards Nos. 80, 81, 82, 83, and 84, I believe are in evidence here.

In your issuance of any of those, have you intended that the delivered price quotations figured from any of those, through the use of them and your freight rate booklets, and your delivery charge booklets, were to be any lower at any destination than price quotations of your competitors?

Mr. Stewart: Just a moment until I get that ques-
1356 tion. You turn your head away, and we don't get it over here.

Trial Examiner Norwood: Read the question.

(Last question read.)

Trial Examiner Norwood: Answer the question.

A. Each of those cards, of course, are by themselves, and when I would make a quotation on the card, it would depend entirely what my competition was, how far I would go with that card.

Trial Examiner Norwood: Answer the question. Did you intend it to be lower, any lower than the other quotations?

The Witness: I don't know what the cards are for our competitors. We only use our own. I don't know what my competitor's figures are.

By Mr. MacIntyre:

Q. Did you intend, in the use of those cards, in the figuring of your delivered price quotations, to be any lower than your competitors at destination?

Mr. Stewart: Just a moment, I object.

Trial Examiner Norwood: If counsel is going to explain anything, I will ask the witness to withdraw.

Mr. Stewart: No, I am not going to explain anything.

1357 It seems to me the question assumes: If you use the price cards, is the result one thing, but the question is he assumes he is going to use the price cards, and the witness says he isn't.

Trial Examiner Norwood: I think he does assume he is using the price cards. He is asking for reasons behind using the price cards.

Read the question.

(Last question read.)

A. I can't tell you that, Mr. MacIntyre. I don't know what my competitor's price is going to be.

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By Mr. MacIntyre:

Q. Whether you know what your competitor's prices are, or not, Mr. Holly, can't you tell us whether you intend, in the issuance of these price cards, to make price quotations, figures from them, being lower than those of your competitors? You can tell us what your intentions are, whether you know what the others are or not, can't you?

A. I don't know what the competitor's are.

If I figure on those cards, I get a certain price.

If my competitor makes a price, I don't know what it is going to be. I can tell you mine, but not what the competitor's price is going to be.

Trial Examiner Norwood: Do you make out those bids without any regard whatsoever of what you think your
1358 competition is to be?

The Witness: Well, I try to figure out what my competition is. That's why I say, Mr. Commissioner, when I figure a price, I am figuring against Pittsburgh competition, I have a certain absorption to make, I have to take all that into consideration. I want—

Trial Examiner Norwood: Answer my question. Do you make out your price, then, with respect to what you think the competition will be or the competitive price will be? Do you not?

The Witness: I want to be competitive. I have got to be competitive.

Trial Examiner Norwood: You talk about being competitive; then, do you mean making the same price as your competitor, or lower price?

The Witness: I can't tell that. I may be lower, and I may be a little higher, according to the bids, you see. You see bids going through here; my price is sometimes way up and sometimes way down. We don't know where we are going to be.

By Mr. MacIntyre:

Q. Do you intentionally make your price cards to show a delivered price quotation less than those of your competitors at any destination?

A. My price cards?

1359 Q. Yes.

A. The price cards, Mr. MacIntyre, over a period of years don't mean a thing.

Q. I am asking you about them, whether they mean anything or not, Mr. Holly. Do you intend to make them

show delivered price quotations at any point lower than those of your competitors?

A. So far as the card is concerned, no.

Q. That is what we are talking about.

A. The card itself probably, if they figure it the same way I do. I don't know that. If they take the same rate, if they take the same figures on the card, then the price may be the same. But again I say, that is not the wind-up.

Q. But do you intend that the delivered price quotations, determined from the use of your cards, to be any lower than those of your competitors?

A. I like to be competitive. I want to be as low as they are.

Q. Do you intend to have them any lower at any destination, through the use of your cards?

A. Well, the card itself, as I say, the card don't make my price.

Trial Examiner Norwood: Now, I wish you would answer his question. Is it your intention to make those prices higher or the same or just what?

1360 The Witness: Well, I can't understand why—on the card, if I figure the card, and if they figure the card that way, my price might be the same as my competitors. I don't know that.

By Mr. MacIntyre:

Q. Whether they are the same or not, have you intended for them to be the same?

A. I didn't intend it to be the same. I want to get as much money as my competitors for my materials.

Q. Mr. Holly, I am showing you Commission's Exhibit 55Z61 to 55Z64, inclusive, your price card No. 84, as issued by you on January 24, 1941. I am asking you now whether or not that when you specify the prices that are shown on that card, that you intended that they be lower than any published price card of your competitors?

Mr. Stewart: I should like the record to show that I object on the ground that the question of the witness' intention or his company's intention is irrelevant and immaterial. It isn't a question of intention. Besides, the question has already been answered.

Trial Examiner Norwood: It goes to the objection of this pricing method. I think it is material. Objection overruled. Answer the question.

A. Well, we put that card out, I imagine—our price, if

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it is figured out, it may be the same as our competitors.

1361 By Mr. MacIntyre:

Q. Well, but when you issued that card, did you intend for it to be lower, or carry prices any lower than the price cards of your competitors?

A. I imagine we wanted just as good a price as our competitors.

Q. Did you intend for it, and try to make it any lower than your competitors?

A. I don't think so, no.

Q. Why?

A. I don't know why. Because we are competing with our competitors all the time; if they can get $5 for a piece of pipe, so can I.

Q. You don't want to make it any lower?

A. Yes. We have made it lower right along.

Q. Why didn't you make it lower in card 84?

A. I don't know why we didn't in this particular instance. But we are making it lower all the time than the cards show.

Q. I am talking about the cards, why don't you make your cards lower?

A. I don't know that.

Q. You issue this, but you don't know?

A. I don't know why we should make them any lower than anybody else. We are competing with our competitors.

1362 Q. You say you are competing with your competitors, and in doing so, you make the cards the same. You want us to understand, do you, that you consider that you are competing when you do make the prices the same?

Mr. Stewart: Now, just a moment. What is that question? It is an argument, really.

Trial Examiner Norwood: Well, I think it goes to the terms he has used here.

Mr. Stewart: That may well be, but the form of the question is such that it gets turned into an argument. I don't know whether it is a question.

Trial Examiner Norwood: Answer the question.

Mr. Stewart: I would like to have it read, please.

Trial Examiner Norwood: All right.

(Last question read.)

Mr. Stewart: Answer it, if you can. I don't know what it means.

A. I would say so, yes.

By Mr. MacIntyre:

Q. That is what you mean by competition when you use it here?

A. What?

Q. That is what you mean by the term competing, or the word competition, when you use it here?

A. Yes.

1363 Q. Mr. Holly, you have represented the Youngstown Sheet & Tube Company in its membership in various trade associations, have you?

A. That's correct.

Q. And have you included in that representation membership in the Associated Manufacturers of Electrical Supplies, Interior Conduit Section?

A. That was under NEMA; is that what they call it? What is the name of the Association?

Q. Associated Manufacturers of Electrical Supplies, 1917.

A. I think that was the earlier name of that same company.

Q. Rigid conduit—

A. We were probably members, if your record shows we were. That is a long time ago.

Mr. Stewart: 24 years is a small item.

A. If your records show, we may. I have no such records. If your records show we were members, we were members.

By Mr. MacIntyre:

Q. Don't you have an independent recollection today of you having attended meetings?

A. I attended meetings over a period of years. Just what and where they were, I couldn't tell.

Q. Do you recall having attended meetings of the

1364 Rigid Conduit Section of the National Electrical Manufacturers Association?

A. That is what you are referring to now, isn't it?

Q. That is after 1926, I am asking you about now.

A. National—

Q. National Electrical Manufacturers Association, NEMA, Rigid Conduit Section.

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A. That was years ago. We were members of that Association years ago.

Q. You represented your company—

A. We have been out of that years ago.

Q. But you represented your company at meetings held by that section, didn't you?

A. Yes.

Q. I show you Commission's Exhibit 691-Z-119, minutes of a meeting of the Rigid Conduit Section of Associated Manufacturers of Electrical Supplies, June 18, 1924; do you remember representing your company at meetings of that organization?

A. It shows I was there. I must have been there. My name is on the book.

Q. Don't you have a recollection of having attended such meetings?

A. Those meetings, I don't remember. The record shows I was there. That's all there is to it. I was there.

Q. Do you recall having attended meetings of the
1365 Rigid Conduit Section of the National Electrical Manufacturers Association as a representative of your company as late as 1934, at the time they were holding meetings at 155 East 44th Street, New York, and Mr. Bibber and Mr. Hodkinson were there?

A. That was during NRA, you are referring back to?

Q. Yes.

A. I don't know whether the Association was there or not.

Q. You attended meetings with those gentlemen, did you?

A. Yes, I probably did, yes, sir.

Q. And do you recall having attended meetings of the Rigid Steel Conduit Association since NRA, as a representative of your company?

A. That's right. If the minutes show I was there, I was there.

Q. Why were you attending meetings of the Rigid Steel Conduit Association since NRA as a representative of your company, Mr. Holly?

A. We have—we are interested in developing rigid conduit business. My company was always interested in helping along with the industry, to take our part in anything that we could do to bolster up and get along and increase our business in the conduit industry. There are a great

many things entering into the conduit field continually, and a great many cases where some business is getting
1366 away from us. We were very much interested in meeting with these men and developing the conduit business to increase our tonnage.

Q. You attended the meetings for the purpose of meeting those problems, did you?

A. Yes, sir, we did.

Q. Do you recall being in attendance at a meeting of the Rigid Steel Conduit Association in Pittsburgh on March 11, 1936, as is shown by Commission's Exhibit 7-A?

A. I don't remember, Mr. MacIntyre; but the record shows I was there, and I was there. I wouldn't remember. If your record shows I was at the meeting, I was there.

Q. You don't dispute the showing of the record?

A. If the record shows I was there, I wouldn't know. I have no such minutes myself.

Q. Mr. Holly, what would you consider to be a so-called excessive specification for rigid steel conduit?

A. I would call an excessive specification where a man, for certain conduit, particularly, now, referring to galvanized, would ask us to make a piece of conduit to stand eight or nine or ten dips, one minute in copper sulphate; that would be an excessive specification, because, in the first place, it is hard to make, takes a lot of zinc, and it is a question whether it would work out. Every once in a while an engineer gets an idea that he wants something better than was ever put on the market. And as a rule, it is
1367 an expensive thing to make.

Q. You would consider in such cases, where an engineer in these past years desired to have put on the market, or desired to produce for him something better in the way of rigid steel conduit than was then being put on the market, that he would be asking for something in the nature of excessive specifications?

Mr. Stewart: I object to that question.

Mr. Gilpatric: That is not a fair statement of the witness' answer at all.

Mr. MacIntyre: I am asking a new question.

A. In the first place, in operating in a mill, if a man wants you to make a special specification, going through the mill, it would be hard to handle that going through a mill, for the reason that in taking it through the mill you couldn't isolate that particular piece of business going

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through a mill. It would be hard to isolate that and mix it with your regular product.

Trial Examiner Norwood: Coming back to the specification—

The Witness: What's that?

Trial Examiner Norwood: You mean that it specifies more than is necessary?

The Witness: In our opinion, yes, sir, Mr. Commissioner, it would be more than is actually necessary,
1368 in our experience over a period of years.

By Mr. MacIntyre:

Q. And in your opinion, what is necessary, in your experience, is that set of standards which are current in the industry; is that correct?

A. I would say this: that that has been tested out over a period of years by chemists, engineers, and metallurgists, and over a test in buildings over a period of years, in a conduit that has been in for 50 years; we feel that makes a pretty good specification today.

Q. And those, of course, are expressed in the so-called standard specifications of the industry today; is that correct?

A. Yes, I think so.

Q. And anything in excess of those you would consider to be excessive specifications?

A. That depends what he would want, I don't know. Not necessarily. There is a conduit made at times, you take the standard specification, that don't necessarily mean if a specification calls for four dip conduit, that the customer don't get five or six dip conduit, because you can't hold, in putting through that hot galvanized pipe going through a mill, you can't guarantee that that piece of pipe is going to stand four dips. It might stand six or seven dips,
1369 because you can't remove—zinc is expensive, and you remove it if you can, and you do if you can—and it may take more than you really figure on putting on.

Q. If you gave him two or three dips at his request in excess of what the standard specifications called for, it is your conclusion that it would be excessive specification on his part?

A. Well, in this way: take zinc today—you don't mind if I give you an example that happened in the past week?

Zinc has gone up a cent a pound in the past week. That means that our cost, immediately when that goes up, costs

us a dollar and a half to a dollar seventy-five cents a ton additional in that cost of zinc, immediately. So any zinc that you put—excess zinc you put on the pipe costs you a lot of money. You just can't afford it.

Trial Examiner Norwood: The question is if you did put it on, would it be considered excessive?

The Witness: If you did put it on, Mr. Commissioner, it may be hard—

Trial Examiner Norwood: There is no use of you going into that cost.

The Witness: It may be put on and may splinter and come off the pipe.

By Mr. MacIntyre:

Q. If you put it on, you would say it was excessive specification?

1370 A. It depends on how far above the four dip or five dip you may go. We are making today, Mr. MacIntyre—

Q. I am asking you these questions, and probably if I tell you this, you may be able to answer the question correctly.

In past years in your attendance at meetings of your Association, you have talked to your associates at those meetings about excessive specifications. Now, I want to get your present understanding of what you were then talking about.

Mr. Stewart: Just a moment. Are you asking a question, or are you telling him that is what he talked about?

Mr. MacIntyre: I have told him what the record shows, and now I am asking him what he meant by what he said at that time.

Mr. Stewart: All right.

A. I mean this. If you are talking about an excessive specification, it costs a lot of money to put it on.

By Mr. MacIntyre:

Q. Irrespective of what it costs, I am asking you now what you meant by the term that you used at that time.

A. Just that—

Mr. Stewart: Just a moment, Mr. Holly.

Trial Examiner Norwood: I think he explained that

1371 to me some time ago.

The Witness: I think so, Mr. Commissioner.

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Mr. Stewart: And besides—

Trial Examiner Norwood: It would specify more than necessary to meet the conditions that conduit pipe is designed to meet. That is the idea he gave me.

By Mr. MacIntyre:

Q. I would like to get his precise limitations on that understanding, and that is as to whether or not in his use of that term back a few years ago, as the record shows he did use it, that he was talking about specifications that exceeded the standard specifications of the industry as of that day.

Trial Examiner Norwood: Tell us that.

Mr. MacIntyre: I think we are entitled to a direct, clear and concise answer on it.

Mr. Stewart: The point I make is this, Mr. Examiner: If the record shows that Mr. Holly was talking about excess specifications in some connection, that I ask he be shown the record so he knows what he was talking about. I don't know. Mr. MacIntyre says he is talking about certain things, and I don't know what Mr. MacIntyre has in mind.

Trial Examiner Norwood: Do you have the record here?

1372 Mr. Stewart: There is a record, somewhere, apparently, because he is referring to it.

By Mr. MacIntyre:

Q. Mr. Holly, I show you Commission's Exhibit 692-Z-169 to Z-173, and call your attention especially to 692-Z-172.

Mr. Stewart: What is the date of those minutes?

By Mr. MacIntyre:

Q. Being the minutes of the National Electrical Manufacturers Association, that is, NEMA, Rigid Steel Conduit Section, at the Hotel Biltmore, New York City, June 22, 1932, in which reference is made to a communication that day received from you concerning this term excessive specifications, with the conclusion on the part of those present that that matter be taken up with you as the chairman of a technical committee. Now, as to that matter there discussed, and in the use of the words or term "excessive specification," what did it mean to you as it was there discussed?

A. Well, I don't remember exactly what brought
1373 this case up. Some particular case brought up. I would say this: that if a man wants a great deal more zinc on it, we would have to charge him more money for it.

Q. And that would be an excessive specification?

A. Naturally; the more zinc I put on, the heavier my cost is, the more money I can get for the product.

Q. And if it entailed the matter of putting on three times as many threads at the end as the standard specifications now call for, that would be excessive, would it?

A. No. Well, I will tell you why. A conduit—no, you are wrong; when you come to threading a pipe, you can't put on more threads than the coupling will cover. For instance, when you take a piece of conduit and put it together, and you find you have to get your coupling on, you want your threads to be covered by your coupling in order so your rust corrosion don't set in. Your threads haven't anything to do with a piece of conduit.

Q. Your standard specifications call for so many threads on the end?

A. For that reason.

Q. If some man, these crazy engineers, wanted three times as many threads, he would be asking for something in the way of excessive specifications?

A. Mr. MacIntyre, I don't think an engineer would be fool enough to call for anything of that kind.

1374 Trial Examiner Norwood: Wait a minute. That isn't what he asked you. If he did ask you for that, would you consider it an excessive specification? Yes or no.

The Witness: Well, I don't know. We could give it to him.

Trial Examiner Norwood: Would you consider it an excessive specification?

The Witness: I don't know whether I would consider it an excessive specification or not. We would make it and give it to him if the man insisted on having it.

Trial Examiner Norwood: I asked you whether you would consider it excessive or not.

The Witness: I wouldn't know, Mr. Commissioner, whether you would or not.

Trial Examiner Norwood: That is the answer, then. We will take a five minute recess.

(A recess taken.)

Trial Examiner Norwood: Proceed.

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By Mr. MacIntyre:

Q. Mr. Holly, do you make sales of rigid steel conduit to the Clayton Mark Company?

A. We do, sir.

Q. Pursuant to what arrangement?

A. What is that?

Q. Pursuant to what arrangement do you make sales to them?

1375 A. We have an arrangement with them, they have —we ship the conduit under their trade name for them.

Q. From your plant?

A. From our plant.

Q. What plant is that?

A. In Chicago and Youngstown—and Struthers, really, is the plant.

Q. You ship from both of those plants?

A. Yes.

Q. Depending on whether it is a shipment to a destination nearest to, say, Struthers, it would be shipped from Struthers?

A. Yes.

Q. And if it is to be a destination nearer Chicago than Struthers, then you would ship from Chicago?

A. They would ship their own pipe. In other words, Mr. MacIntyre, we deliver a lot of conduit to their place at Evanston, they store it there; they have a big storing place. They would probably ship that kind of stuff themselves. We wouldn't ship it for them. They would handle it themselves.

Q. Are we to understand or do we understand correctly, then, that the shipments that you make direct from your factory to customers of Clayton Mark are made only from Struthers?

1376 A. No. Well, yes, I would say from Struthers. We would ship direct to their accounts for them.

Q. And wherever they ship direct to their customers, they ship conduit manufactured by you from a warehouse of theirs in Evanston, Illinois?

A. I would think that is what they would do.

Q. The policy is followed out all the way along?

A. Yes.

Q. Do you have an arrangement with them whereby you will ship all of the conduit that they order from you?

A. No, I wouldn't say that, not all that they order from us, because we wouldn't be able to do that. We haven't got the output. They probably would want a great deal more than we could let them have.

Q. Have you placed any limitations on the amount you will ship them at any one time?

A. Approximately.

Q. And approximately what is that?

A. Anywhere from 300 to 500 tons.

Q. Within what period of time?

A. Within a month.

Q. In other words, you have limited yourself, or limited your liability to make shipments to Clayton Mark & Company?

A. We only limit it in this way, Mr. MacIntyre: If we have it, we like to give it to them; if we haven't, we
1377 can't give it to them and take care of them and ourselves, too.

Q. You have limited your liability to ship to them under any contract you have with them up to 500 tons?

A. Just verbally, that was sort of our understanding, man to man, that we would try to live up to it in about that neighborhood.

Q. About 500 tons a month?

A. Yes, about that.

Q. As a top limit. And as to price you charge them for that conduit, is that a price lower than you charge other customers of the Youngstown Sheet & Tube Company?

A. You mean other jobbers? Clayton Mark is a manufacturer. If I may—you probably know, Clayton Mark, we owned that. Would you want me to tell you how that comes about, Clayton Mark?

Q. Yes.

A. We owned that Evanston mill, and a few years ago we sold that mill back to the Mark Company, which is now called the Clayton Mark Company, and they sold their pipe business to us. They used to manufacture steel pipe themselves. And when they went out of that business, why, they made arrangements with us to continue to make their conduit for them, the rigid conduit. They make some conduit themselves, you understand, they manufacture light wall pipe in their own mills. But I am talking now about heavy wall.

1378 Q. They don't do any manufacturing of that?

A. Who?

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Q. Clayton Mark?
A. I don't think, at the moment.
Q. Just supply them with all that they sell of the heavy wall?
A. Yes.
Q. Standard rigid steel conduit?
A. Yes, standard rigid steel conduit, that's right.
Q. Now, coming back to the question I asked a few minutes ago, do you, as to conduit that you sell them, charge them the same, or charge them less than you charge other customers for the same type of conduit?
A. We would charge them less, due to the fact that they are a manufacturer and not a jobber. We would charge them less than we would a jobber.
Q. You charge them less merely because of the fact that they are manufacturers?
A. Correct.
Q. And for no other reason?
A. No other reason.
Q. Have you supplied Clayton Mark & Company with price information?
A. No; I think they get their own. We have nothing to do with them so far as price.
1379 Q. It is your testimony now that you never supplied them price information for their use?
A. Price sheets and things of that kind?
Q. Yes.
A. We don't give them price sheets. They get their own. So far as I know, they have their own. We just make our own Youngstown Sheet & Tube, we haven't got a thing to do with their price sheets. They make their own selling prices, and work out their own selling price. We haven't a thing to do with them.
Q. Is it your testimony you have never discussed with them the matter of price information?
A. Selling prices?
Q. Yes.
A. We don't discuss that with them. They have been in this business, and they follow their own practice. They have been a conduit manufacturer for years.
Q. Mr. E. L. Wyman managed their sales for many years?
A. At one time, yes. He is not with them any more.
Q. He is with your company now?

A. He is not with our company any more, either.
Q. He has been recently, hasn't he?
A. Not up to almost about a year ago.
Q. In other words, up to some point within a year ago, he was with your company?
1380 A. I am only guessing at that. That may be the time, a year ago. I don't know how long ago he has resigned from our company, but it is quite some time ago.
Q. And how long was he with your company before he resigned approximately one year ago?
A. I couldn't tell you that. I don't know whether it is a couple of years, two or three years, or what. I am not sure about the time. I could get such information for you from our ledgers.
Q. You would say it was approximately two or three years?
A. Maybe several years.
Q. And he came directly into your sales organization from the sales organization of Clayton Mark & Company without any interruption?
A. I think that is correct.
Q. And you knew him for the period of years that he served as one of the managers of the sales of Clayton Mark & Company?
A. I have known him for years.
Q. In fact, you met him at meetings of the Associations where you attended?
A. He attended some meetings, I saw him.
Q. And you were there?
A. Yes, sir.
Q. Have you made it a practice of attending meet-
1381 ings of the National Electrical Wholesalers Association?
A. I have attended those, where they held those meetings, because—yes, I would say I have, because my customers attend those meetings, and I go there to see my customers, and it saves me a lot of traveling.
Q. At least once a year?
A. Last year I didn't attend any.
Q. Can you recall any other year where you didn't attend any?
A. It is possible I have. I don't attend them all.
Q. As a general rule, do you attend them?
A. I generally do, because my customers attend those, and I like to see my customers there.

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Q. And you also see your competitors?

A. Occasionally I see a competitor. They are looking after their customers.

Q. Mr. Holly, I show you Commission's Exhibit, for identification, 73-G, consisting of 13 pages, which has been submitted here by your counsel, and certified to by them, as being what it purports to be, that is, the freight rate schedule No. 4 of the Youngstown Sheet & Tube Company of October 25, 1938, with revised pages going through to the date of May 25, 1940. You used that in figuring delivered price quotations, have you?

A. Yes.

1382 Mr. MacIntyre: If your Honor please, I offer this booklet into evidence at this time, Commission's Exhibit 73-G, 13 pages, which has already been identified.

Trial Examiner Norwood: Is there any objection?

(No response.)

Trial Examiner Norwood: Received as marked.

COMMISSION'S EXHIBIT NO. 73-G, was offered and received in evidence.

Mr. MacIntyre: I believe that is all, Mr. Holly.

Trial Examiner Norwood: Cross-examine.

Mr. MacIntyre: No; I would like to ask a few questions before cross-examination.

By Mr. MacIntyre:

Q. Mr. Holly, you do make sales to jobbers and wholesalers of rigid steel conduit under a consigned stock agreement, do you?

A. We have consigned stocks with our jobbers under our—on an agreement we developed ourselves. We have an agreement with our jobbers.

Q. And has that agreement been made somewhat a standard form you used for your jobbers?

A. Our jobbers, yes.

Q. And it is standard as to all of your jobbers?

A. Yes.

1383 Q. And what were the dates on which you last made revision, then?

A. We made some few changes in this consigned stock contract on account of the changes of the times. There were just one or two lines, I wouldn't recall just what it was.

Q. You made some changes during late 1936 and early 1937, did you not?

A. I wouldn't know, Mr. MacIntyre, without going back and digging up the papers to see how the contract read.

Q. But you used the form during that period of time, didn't you?

A. Yes, we used it.

Mr. MacIntyre: I would like to ask counsel for Youngstown Sheet & Tube Company to produce the form which was used by the Youngstown Sheet & Tube Company; that is, the consigned stock agreement form during 1937, and also ask them to produce any specific job contract and forms which were used by that company during that same period of time.

Mr. Robison: I will say at this time, Mr. Examiner, I don't know whether we have any of those forms in Pittsburgh or not, but if not, we have them in New York or can get them at Youngstown, and will be glad to produce them at a suitable time.

1384 By Mr. MacIntyre:

Q. You did, during 1937, use specific job contracts for special building contracts?

A. I think we had—

Q. One for amounts up to 20,000 pounds and one up to 40,000?

A. It didn't make any difference. We didn't designate. We made a contract of so many tons for a specific building. I don't think that we specified—it depends how much the job took.

Mr. MacIntyre: I would like to ask counsel for the Youngstown Sheet & Tube to furnish us with copies of the form of specific job contracts which were used by Youngstown Sheet & Tube during 1937 or 1938.

Mr. Robison: Is that different from the former request? If there is a difference, I haven't been able to distinguish it.

The Witness: 1938, he said.

Mr. Robison: I am trying to find out the difference between your present request and the former one.

Mr. MacIntyre: The first one dealt with consigned stock agreement form. This is for the specific contract form.

Mr. Gilpatric: During 1938 as well as 1937?

Mr. MacIntyre: In other words, if you had differ-
1385 ent form or forms which were revised between 1937 and 1938, we want the revised as well as those used in 1937.

I believe that is all, Mr. Holly.

Trial Examiner Norwood: Cross-examine.

Cross-Examination by Mr. Gilpatric.

Q. Mr. Holly, do you know whether the Clayton Mark Company is equipped to make rigid steel conduit?

A. I am not positive that they are equipped to make. I doubt at the moment that they are equipped to make rigid steel conduit. They may be. I don't know that.

Q. Referring to questions Mr. MacIntyre asked you about meetings of the National Electrical Wholesalers Association: Is Youngstown Sheet & Tube Company a member of that Association?

A. No, sir.

Q. When you say that you attended meetings, do you mean that you were physically present at the—

A. I was at the place where they held their meeting, but I have no connection with the Association in any way; none whatever. Just go there to see my jobbers that come there from all over the country.

Mr. Gilpatric: I have no further questions.

Trial Examiner Norwood: Any further questions?

Mr. King: I have some questions.

1386 *Cross-Examination by Mr. King.*

Q. Mr. Holly, did you at any time ever agree with Mr. Wyman or any member of the Clayton Mark, or, to your knowledge, did Mr. Wyman or any member of Clayton Mark ever agree with you, as a representative of Youngstown Sheet & Tube Company, to maintain fixed prices?

Mr. MacIntyre: I object to the question because it calls for a conclusion of fact. We can ask this man what he did and let the Commission and the Court determine whether or not that what he did in his conversations with Mr. Wyman to do something that amounted to an agreement.

Trial Examiner Norwood: Objection overruled.

Answer the question.

A. Whether I agreed? No, I would never agree with anybody that I would maintain a price with any manufacturer. I don't care who he is.

By Mr. King:

Q. To your knowledge, did Mr. Wyman, or any member of Clayton Mark ever agree with you to that effect?

A. He never did.

Q. Now, Mr. Holly, did you or, to your knowledge, did any member of Clayton Mark & Company, or any other Respondent, at any time even threaten to cut prices?

1388 A. No.

Mr. King: That's all. Thank you.

Trial Examiner Norwood: Any further cross-examination?

Mr. MacIntyre: May we have the last question read?

(Last question read.)

Redirect Examination by Mr. MacIntyre.

Q. Mr. Holly, you have told us earlier this morn-

1389 ing about attending a meeting here in Pittsburgh on March 11, 1936.

Do you recall that within approximately one week after that meeting that you had put out a price card which showed a reduction in price by as much as 27% below what the previous card had been? Do you recall that?

A. I remember that price.

Q. Do you recall that it was approximately 27% below what the price was prior to that meeting?

A. That's right.

Q. The Youngstown Sheet & Tube Company is about the largest producer of rigid steel conduit in the country, isn't it?

A. I wouldn't say that, that they are the largest. They are the largest producer of pipe, but when you talk about a finished conduit, there are a number of men sitting around here that are very large producers of conduit, and I don't know their production, and I wouldn't want to put it in that way.

Q. Who would probably be ahead of you or up about your position? The General Electric Company?

A. Two or three or four people.

Q. I am asking you: would you put General Electric up there with you?

A. I would say so.

Q. And you couldn't name more than one other

1390 that would come up there in your position of doing business with General Electric, could you?

A. I could probably name one or two others.

Q. The National Electric Supply Corporation?

A. Yes, they would be—

Mr. Stewart: Excuse me. Did you say "National Electric Supply Corporation"?

By Mr. MacIntyre:

Q. National Electric Products Corporation?

A. I thought you said "Products."

Q. Those are the big ones in the industry?

A. That's what they say.

Q. Do you know that from your information and from your knowledge?

A. Naturally, I am with the company, and I think they are a pretty large outfit, but some of the others think theirs is large; and they are.

Q. And you also know that the National Electric Products Corporation, Youngstown Sheet & Tube Company, and General Electric do not necessarily depend on their sales of rigid steel conduit in the conduct of their business, that they manufacture and sell many other products; is that correct?

A. The National and General Electric does, and we are in the steel business, and the conduit is part of our business, and we have to consider that.

1391 Q. It is a very small part of the total business of the Youngstown Sheet & Tube Company, isn't it?

A. That is correct.

Mr. MacIntyre: That is all.

Trial Examiner Norwood: You are discharged.

(Witness excused.)

Trial Examiner Norwood: Call your next witness.

Mr. MacIntyre: Mr. J. H. Collier.

J. H. COLLIER, a witness called by and on behalf of the Commission, having been first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

Q. State your name, please.
A. J. H. Collier.
Q. What is your business or occupation, Mr. Collier?
A. I am president of the Steelduct Company.
Q. That's one of the Respondents here?
A. Yes.
Q. How long have you held that position?
A. 12 years.
Q. And were you connected with the company prior to that time?
A. Yes, sir; from 1921.
1392 Q. In what capacity?
A. I started in as a clerk and then I was secretary and then vice president and then I became president.
Q. Did you have anything to do with sales prior to 12 years ago?
A. Yes.
Q. What were your duties prior to 12 years ago?
A. Well, I handled mostly the clerical work in connection with the sales.
Q. Your duties as president for the past 12 years has imposed on you what, with respect to sales and sales policies of your company?
A. Well, I am in charge of them.
Q. The equivalent to a sales manager, as well as president; is that correct?
A. That is correct.
Q. Over what territory does the Steelduct Company make sales in rigid steel conduit?
A. Most of the United States and some of the possessions.
Q. Where is its plant located?
A. The Steelduct Company doesn't have a plant.
Q. Where does it secure the rigid steel conduit which it sells?
A. We buy steel pipe and ship it to the Enameled Metals Company at Etna, Pennsylvania, and they fabricate
1393 it into conduit for us.

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Q. All shipments pursuant to all sales, you make them from the plant of the Enameled Metals Company at Etna, Pennsylvania; is that right?

A. That's right.

Q. That is spelled E-t-n-a?

A. That's right.

Q. Your price cards, Mr. Collier, of the Steelduct Company, are in evidence here as Commission's Exhibit 64. What, if anything, did you have to do with the preparation and publication of those price cards?

A. Well, it was up to me to decide whether we would publish the card.

Q. And to order that it be published?

A. Order that it be published.

Q. In your publication of these cards, that is, in your decision to name the price which appeared in those cards as you published it, what led you to specify the price that the card showed; that you specified?

A. Well, generally, we received notice from our salesmen that such prices were being offered to the trade, and we got the sheet and looked them over, and I would decide whether that was what we wanted to do or not.

Q. That is, as to whether you wanted to follow those prices?

1394 A. Follow.

Q. As a general rule, you have been a price follower in the 12 years you have been president; is that correct?

A. That's right.

Q. Have you ever initiated a price change on your price cards before the same had been published by your competitors, to your knowledge?

A. No, I don't think we did.

Q. Your decision, then, in putting out your price cards, had been one of adopting some price card which had been put out by your competitors; is that correct?

A. Yes.

Q. What leads you to follow that practice instead of making prices of your own, Mr. Collier?

A. The Steelduct Company is a small company, and we don't feel that we can control the price situation. We have to do the best we can and try to meet the prices that are published by other people.

Q. You recall clearly the statement contained in your

price cards as to the method provided for in figuring delivered price quotations through the use of those cards?

A. Yes, I am familiar with the method.

Q. You have seen price cards of your competitors throughout the period of your term as president of your company which carried provisions for figuring prices
1395 in exactly the same way?

A. Yes, I have seen cards.

Q. Have you ever seen any published price cards of your competitors that provided for the figuring of prices in any other way?

A. I am not sure that I understand that. In any other way what?

Q. In any other way than the method that is outlined in your card; of taking a basing point price, adding to that the freight rates from the basing point to the destination and converting it in terms of hundred feet or thousand feet?

A. Well, there was a list and discount method used years ago.

Q. I am talking about in the last 12 years. Do you know of any other method?

A. I don't think I do.

Q. Have you ever seen any price cards published in the industry which provided for prices FOB mills as distinguished from the delivered price quotation rather than on the basis of the basing point price?

A. I am not sure exactly what is on our card in that respect. However, we would sell FOB mill without any question, because we are in Pittsburgh.

Q. I show you Commission's Exhibit 64, Mr. Col-
1396 lier, and ask you to point out to me any provision contained in that exhibit, that is, in any part of that exhibit, pursuant to which a buyer would be permitted to buy from your company on the basis of FOB mill?

A. The only thing I see is that prices are given FOB Pittsburgh, and we are in the Pittsburgh district.

Q. But in that connection they provide that the cost to the buyer shall be that price FOB Pittsburgh plus rail freight to the destination involved, doesn't it? Do you see any other way by which a buyer could arrive at his cost than that that I have just outlined; from those price cards?

A. Well, if shipment were made by rail from Pitts-

burgh, this would be the proper method to use in figuring his prices.

Q. Do you give a buyer, say, in Wheeling, West Virginia, any other price than that as shown by those cards; that is, Pittsburgh basing point price plus freight from Pittsburgh to Wheeling; that is, railroad freight?

A. We don't happen to have a customer in Wheeling.

Q. Steubenville?

A. No, we don't happen to have one there, either.

Q. Cleveland?

A. Cleveland. That would be the basis on which a price would be figured less anything that we thought
1397 it necessary to give beyond the card.

Q. You have customers near Chicago, have you?

A. Yes, sir.

Q. And what do you tell the customer in Chicago will be his price?

A. The customer in Chicago, the price according to the sheet for the Chicago base.

Q. Do you recall ever having given to your customer any FOB mill price that is not calculated in accordance with the Pittsburgh or Chicago basing point, as shown by your cards, Commission's Exhibit 64?

Mr. Stewart: You mean the price or the method on which now?

Mr. MacIntyre: Talking about his quotations of price.

A. Do you mean have we ever given a price other than on these sheets?

By Mr. MacIntyre:

Q. I am talking about your published prices. Have you ever published openly to your customers and to the trade any price other than those based on the Pittsburgh or Chicago basing point prices, as is shown by your cards, Commission's Exhibit 64?

A. No, we never published any other sheets than these, showing the prices.

1398 Q. And have you ever seen, in the industry, any publication of price cards by any of your competitors, that provided for any other method of determining what the buyer shall pay, other than the method that is shown by your card, Exhibit 64?

A. I have never seen any other sheet showing any other method of arriving at a price; published sheet.

Q. Have you and your competitors ever used any other method in arriving at delivered price quotations which assured you and your competitors of the same degree of uniformity as the method which you and they used and to which you have just made reference?

Mr. Stewart: I object to the form of the question because, first, it assumes a condition which is not described in the question. It is a question of degree, as to what is uniform. The same degree of uniformity. I submit the witness can't answer the question.

Trial Examiner Norwood: Read the question.

(Last question read.)

Trial Examiner Norwood: Objection overruled.

Answer the question.

A. I don't know how many competitors arrived at the prices they quote.

Mr. MacIntyre:

Q. I am talking about in their price cards. You 1399 just told us you knew that, Mr. Collier.

Mr. Stewart: Just a moment. I want the witness to understand. The question is: Did you ever know of any other method? That is what he is asking you.

Trial Examiner Norwood: Complete your answer.

A. Well, as I mentioned before, the list and discount system was used some time ago. It was a different method of arriving at delivered prices, but I would say that if you followed that method as closely as you expect us to follow this, that the results would be identical.

By Mr. MacIntyre:

Q. You haven't used that method, though, for 12 years?

A. I would have to refresh my mind and tell you exactly when we stopped.

1402 By Mr. MacIntyre:

Q. Can you and your competitors, in determining delivered price quotations under your card 84, and their card No. 84, which was published during January, 1941, secure uniformity in delivered price quotations without talking to each other about what you and they are going to quote?

Mr. Stewart: I didn't get that question. Will you read it, please?

(Last question read.)

Trial Examiner Norwood: Answer the question.

A. Based on past experience—

Mr. Stewart: Just answer that question that way.

By Mr. MacIntyre:

Q. Talking about this card 84.

Trial Examiner Norwood: Go ahead; the way you started to answer it.

The Witness: May I have that question again? Maybe I didn't understand it.

Trial Examiner Norwood: Read the question.

(Last question read.)

A. The only way you could secure uniform price quotations would be to follow the card exactly as it is
1403 printed, but that is not done. Prices are not uniform for that reason.

Trial Examiner Norwood: In those cases where the prices are uniform, were those results brought about without discussing with competitors what they were going to charge?

The Witness: That's right. I never discussed with my competitors what I was going to charge.

By Mr. MacIntyre:

Q. And were those results brought about without agreeing among yourselves to use that system?

A. That's right. That was the published sheet and we figured a price on it, and if they figured theirs, it came out the same, but there was no agreement.

Q. What is your testimony, Mr. Collier, as to whether or not you are charging prices in accordance with Card 84 during the period of time that it was in effect, after issuance in January, 1941?

A. There have been quite a few deviations from the card, and we have made some deviations.

Q. I am talking about whether or not you made a substantial number of sales in accordance with your card.

Mr. Stewart: I submit that was not the question. You asked him if there had been any departures from the card, and now you are asking whether there were any substantial departures.

1404 Trial Examiner Norwood: Read the pending question.

Mr. Stewart: Take the first question and answer

Mr. MacIntyre: Let us have the questions and answers read, if you please.

(Last two questions and the last answer read.)

Mr. MacIntyre: Strike the pending question.

By Mr. MacIntyre:

Q. I am asking you now, Mr. Collier, whether or not it is your testimony that you are making sales in accordance with Card 84, or whether you made them in accordance with Card 84 after it was issued in January, 1941?

A. We are making some sales in accordance with Card 84.

Q. When you say "some" will you tell us, please, about what percentage of your sales you are making in accordance with that card, or that you did make, after it was issued?

A. It is very difficult to give a percentage that would be accurate.

Trial Examiner Norwood: A substantial number?

The Witness: A substantial number are in accordance with the card.

By Mr. MacIntyre:

Q. Well, as to transactions, as distinguished from tonnage? Would you say as to the transactions, in number, that they would be as much as 75 or 80% of the total number; in accordance with the card?

1405 A. Well, that is pretty difficult, but I would say —it is a guess, and it is not accurate—that 70% would be in accordance with the card.

Mr. MacIntyre: That is all.

Trial Examiner Norwood: Cross-examine.

Mr. Stewart: No cross-examination.

Mr. MacIntyre: Before the witness is excused, I would like to take up with Mr. Stewart the submission of these freight rate books.

Mr. Stewart: May we have five minutes?

Trial Examiner Norwood: We will have a five minute recess.

(A recess was had.)

Trial Examiner Norwood: Call your next witness.

Mr. MacIntyre: Before calling the next witness, I would like at this time to offer the following exhibits: If your Honor please, I now make reference to Commission's Exhibit, for identification, 82-A, consisting of 13 pages,

purporting to be the freight rate schedule No. 4, May 25, 1940, of the Steelduct Company.

Commission's Exhibit 82-B, consisting of 13 pages, purporting to be the freight rate schedule No. 3 of the Steelduct Company, April 25, 1938.

Commission's Exhibit 82-C, consisting of 13 pages, purporting to be the freight rate schedule No. 2 of the
1406 Steelduct Company, November 15, 1937.

Commission's Exhibit 82-D, consisting of four pages, purporting to be the revised supplement of the freight rate books of the Steelduct Company, dated September 1, 1937.

Commission's Exhibit, for identification, 82-E, consisting of three pages, freight rate schedule prepared by the Rigid Steel Conduit Association, as supplement No. 1, dated January 11, 1937.

Commission's Exhibit No. 82-F, for identification, a freight rate booklet prepared by the Rigid Steel Conduit Association, as supplement No. 2, dated March 17, 1937, consisting of 10 pages.

Commission's Exhibit, for identification, 82-G, consisting of four pages, a freight rate schedule, supplement No. 3, dated May 1, 1937, prepared by the Rigid Steel Conduit Association.

Commission's Exhibit, for identification, 82-H, consisting of six pages, purporting to be supplement No. 4 freight rate schedule, dated June 15, 1937, prepared by Rigid Steel Conduit Association.

Commission's Exhibit, for identification, 82-K, consisting of 10 pages, as supplement No. 8, to freight rate bulletins prepared by the Rigid Steel Conduit Association, dated November 16, 1936.

1407 Commission's Exhibit, for identification, 82-L, consisting of eight pages as a supplement No. 4 to rigid steel conduit freight rate bulletin dated April 25, 1935, of the Steelduct Company.

Commission's Exhibit, for identification, 82-M, consisting of 12 pages of freight rate booklet of the Steelduct Company, dated November 1, 1933.

Commission's Exhibit, for identification, 82-N, consisting of 12 pages, a freight rate bulletin of the Steelduct Company, dated December 1, 1930.

Commission's Exhibit 82-I, for identification, consist-

ing of 25 pages of freight rate schedule of January 1, 1937, prepared by the Rigid Steel Conduit Association.

I now ask that Mr. Stewart, if he will, agree that these are the documents which he submitted here pursuant to my request for freight rate booklets used by the Steelduct Company, and whether he will, in that connection, also concede that they are the books used by that company.

Mr. Stewart: I will concede that the documents may be admitted. I don't know what they were, because I don't remember what I saw. There is no objection to their admission.

Mr. MacIntyre: As to identification or anything else?

Mr. Stewart: That is correct.

1408 Mr. MacIntyre: I offer those in evidence.

Trial Examiner Norwood: Is there any objection?

Mr. Gilpatric: No objection.

Trial Examiner Norwood: Received as marked.

COMMISSION'S EXHIBITS NOS. 82-A, B, C, D, E, F, G, H, K, L, M, N, and I, were offered and received in evidence.

(Witness excused.)

Mr. MacIntyre: I now offer into evidence, your Honor, Commission's Exhibits 74-A to 74-Z-22, inclusive, as a photostat of the delivery charge booklet of the Clayton Mark Company, which has already been submitted to me by Mr. King, attorney for that company, and certified to by him as being what it purports to be, that is, the delivery charge booklet of that company. I will ask Mr. King to concede that fact on the record.

Mr. King: There is no certification, apparently, on this booklet. This is a photostatic copy of the delivery charge of Clayton Mark & Company, dated November 15, 1930, which I submitted to Mr. MacIntyre at his request.

Mr. MacIntyre: That is Commission's Exhibit 74-A to 74-Z-22. I offer those in evidence.

Trial Examiner Norwood: Is there an objection?

(No response.)

1409 Trial Examiner Norwood: Received as marked.

COMMISSION'S EXHIBITS NOS. 74-A to 74-Z-22, inclusive were offered and received in evidence.

Mr. MacIntyre: I also offer into evidence, your Honor, Commission's Exhibit 74-Z-23, as the delivery charge booklet of the Clayton Mark Company, which consists of 32 pages, dated March 15, 1937, and which was submitted to

me by attorney for that company, Mr. King, as such booklet. I will ask Mr. King if he will now concede on the record that that is the fact.

Mr. King: That is correct.

Trial Examiner Norwood: Do you offer that?

Mr. MacIntyre: Yes, I offer that into evidence.

Trial Examiner Norwood: Any objection?

(No response.)

Trial Examiner Norwood: Received as marked.

COMMISSION'S EXHIBIT NO. 74-Z-23 was offered and received in evidence.

Mr. MacIntyre: I will also offer into evidence, your Honor, at this time the following freight rate schedules of the Clayton Mark Company, which were submitted to me as such by Mr. King at my request: "Commission's Exhibit, for identification, 74-Z-34," consisting of 12
1410 pages, dated September 1, 1937.

Commission's Exhibit, for identification, 74-Z-35, consisting of 13 pages, dated November 26, 1937.

Commission's Exhibit, for identification, 74-Z-36, consisting of 13 pages, dated April 25, 1938.

Commission's Exhibit, for identification, 74-Z-37 to 74-Z-99, inclusive, being the freight rate schedule No. 4, October 25, 1938, of the Clayton Mark Company, and subsequent supplements thereto, and will ask Mr. King if he will concede that those are the books or photostats of booklets which he furnished to me at my request that he furnish us with the freight rate schedules of the Clayton Mark Company.

Mr. King: That is correct.

Mr. MacIntyre: I offer them into evidence as the freight rate booklets of the Clayton Mark Company, as they purport to be.

Trial Examiner Norwood: Is there any objection?

(No response.)

Trial Examiner Norwood: They will be received as marked.

COMMISSION'S EXHIBITS NOS. 74-Z-34, 74-Z-35, 74-Z-36, 74-Z-37 to 74-Z-99, inclusive were offered and received in evidence.

Trial Examiner Norwood: Off the record.

1411 (Discussion had off the record.)

Trial Examiner Norwood: On the record.

In connection with the receiving of these exhibits, we have just taken in, I will say it is the understanding that the Respondents have the benefit of their standing general objections.

Mr. MacIntyre: But that doesn't go to any identification or authenticity.

Trial Examiner Norwood: No. The objections are considered overruled, and the exhibits were received.

1412 Afternoon Session. 1:30 p. m.

Trial Examiner Norwood: Come to order.

Mr. MacIntyre: I now refer to Commission's Exhibits 85-A consisting of thirteen pages; 85-B, consisting of thirteen pages; 85-C, consisting of pages numbered 3 to 13 inclusive; 85-D, consisting of pages numbered from 4 to 13 inclusive; and 85-E, consisting of pages numbered 3 to 12 inclusive; 85-F, consisting of pages numbered 8 to 13 inclusive; 85-G, consisting of pages numbered 9 and 13; 85-H, one page numbered 13, which have been submitted to me by counsel for Fretz-Moon Tube Company as freight rate compilations used by it. I offer the same in evidence as freight rate compilations or as freight rate compilations used by that company, and as they purport to be on their faces.

Trial Examiner Norwood: Any objection? You offer those in evidence, you say?

Mr. MacIntyre: Yes, I offer those in evidence.

Mr. Robison: No objection.

Trial Examiner Norwood: Received as marked.

COMMISSION'S EXHIBITS NOS. 85-A, 85-B, 85-C, 85-D, 85-E, 85-F, 85-G, and 85-H, were offered and received in evidence.

1413 Mr. MacIntyre: I now make reference to Commission's Exhibit for identification 83-A, consisting of thirteen pages; 83-B, consisting of thirteen pages; 83-C, consisting of pages numbered 3 to 13; 83-D, consisting of pages numbered 4 to 13; 83-E, consisting of pages numbered 3 to 12; 83-F, consisting of pages numbered 8 to 13; 83-G, consisting of two pages numbered 9 and 13; and 83-H, consisting of one page numbered 13; and 83-I, consisting of three pages bearing dates as follows: The first, December 26, 1940, the second, April 17, 1940, and the

third one being a continuation of the second one, signed by Charles Donley.

These documents were submitted to me by counsel for Respondent Steel & Tubes, Inc. on the request I made to them for freight rate compilations used by that company.

I am offering them in evidence at this time as freight rate compilations of that company, submitted to me by its counsel, and as the documents of which they purport to be on their faces.

Trial Examiner Norwood: Any objection?

(No response.)

Trial Examiner Norwood: Received as marked.

COMMISSION'S EXHIBITS NOS. 83-A, 83-B, 83-C, 83-D, 83-E, 83-F, 83-G, 83-H, 83-I, were offered and received in evidence.

(Discussion off the record.)

1414 Mr. MacIntyre: I will ask if counsel for the Respondents will concede that as to all of the exhibits just offered and received in evidence under Commission's Exhibit No. 83, that they are duplicates of exhibits just received in evidence under Commission's Exhibit No. 85, except as to the document marked Commission's Exhibit 83-I?

Mr. Robison: I so concede.

Mr. MacIntyre: Under those circumstances, if your Honor please, I will withdraw all of the exhibit marked Commission's Exhibit 83, except that portion marked 83-I, consisting of three sheets.

Trial Examiner Norwood: The exhibits may be withdrawn.

(Whereupon, the documents heretofore marked for identification and received in evidence as "Commission's Exhibits 83-A to 83-H, inclusive", were withdrawn.)

C. J. KIM was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

Q. What is your name?

A. C. J. Kim.

Q. What is your business and occupation, Mr. Kim?

1415 A. I am assistant sales manager of the National Electric Products Corporation.

Q. How long have you held that position?

A. That position about 15 or 16 years.

Q. Were you with the company prior to that?

A. Yes, sir.

Q. In what capacity?

A. Well, I would say as a sales correspondent, before that.

Q. As assistant sales manager of the company for the period you have indicated, have you had any duties dealing with the sales of products other than rigid steel conduit?

A. I have.

Q. But you have had duties dealing with rigid steel conduit also?

A. Yes, sir.

Q. What part of the total business of National Electric Products Corporation, in terms of dollars and cents by volume, is rigid steel conduit?

A. I don't think I could answer that question.

Q. Could you give us an approximation?

A. I wouldn't even want to make an approximate statement.

Q. Can you tell us whether it would be 10 per cent, 5 per cent?

A. Well, I don't know. I wouldn't want to guess any per cent.

1416 Q. Then I will ask you this question: If National Electric Products Corporation should suspend all of its sales on its rigid steel conduit, it would still be carrying a substantial part of its present business, wouldn't it?

A. I don't think that's a question for me to answer.

Q. Well, the majority of all of its business is in products other than rigid steel conduit, isn't it?

A. The majority of the products?

Q. Yes.

A. There is a good per cent in rigid steel and a good per cent in others, also. Their line varies.

Q. But you can't tell us, can you, Mr. Kim, that half of it is rigid steel out of the total?

A. Not at the present time, I couldn't say.

Q. One-fourth?

A. I couldn't say. I don't know the figures.

Q. But you, as assistant sales manager, don't know whether it would be one-fourth?

A. No, sir.

Q. Over what territory does the National Electric Products Corporation sell its products?

A. Over the entire United States and its possessions.

Q. Does it manufacture its conduit?

A. It fabricates the pipe.

Q. And where does it do it?

1417 A. Ambridge, Pennsylvania.

Q. That is in a suburb just north of Pittsburgh, is that right?

A. That's right.

Trial Examiner Norwood: You mean it takes the pipe from which the conduit—

The Witness: No, it makes the conduit from the pipe. It fabricates it.

By Mr. MacIntyre:

Q. But until it is so fabricated, it is not conduit?

A. No, sir.

Q. In evidence here, Mr. Kim, we have price cards of your company, the National Electric Products Corporation, marked as Commission's Exhibit 62.

Will you tell us what, if anything, you had to do with the preparation and the publication and the distribution of those price cards?

A. What is the date of card 62?

Mr. Stewart: That is the exhibit number.

By Mr. MacIntyre:

Q. That is Exhibit 62, covering price cards of your company from 69, July 17, 1932, to and including 84, which is dated January, 1941.

A. I would like to see the exhibit.

Q. I am showing you Commission's Exhibit 62

1418 (handing to witness).

A. I don't see "62" here.

Q. The exhibit number, there, that you are looking at, Mr. Kim, is Commission's Exhibit 62. It happens to be the price cards of your company, 69 to 84.

A. Now repeat your question.

Q. I am asking you what, if anything, have you had to do with the preparation, publication and distribution of those price cards, or duplicates of them?

A. Well, I would say that my position—I prepared these cards for the printer.

Q. And what does that preparation consist of, Mr. Kim?

A. Pardon me?

Mr. MacIntyre: Please read the question.

(Question read.)

A. Well, the first thing I would do would be to work up the card and take it to my superior for his approval.

Q. When you start to work up the card, what do you do in order to determine the basing point price that is to be included on the card?

A. It depends on what the competition is.

Q. What do you mean by that?

A. Well, if I have a price out and there is a lower price being quoted, the possibilities are I would put out a price lower.

1419 If there was a card out that was higher, I would make some study of it and put out a card that was higher. It all depends on the market.

Q. When you put out a card that carries a price higher than any which you have noted in the field, any of your competitors that you have noted in the field, what leads you to do that?

A. Pardon me?

Q. What leads you to decide to put out a card carrying a basing point price higher than any that you have seen in the field up to that date?

A. Principally it would be the condition of the market; supply and demand.

Q. And what cards have you put out which carried higher prices than any that you had noted in the field at the time?

A. I can't answer that question.

Q. Why can't you?

A. What cards?

Q. Yes.

A. Did I put out?

Q. Yes; or caused to be put out by your company.

A. I can't answer the question.

Q. Why can't you?

A. There are too many cards involved. I don't have that good of a memory.

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Q. Let us refer to card 73. Your company put
1420 out a card No. 73, didn't it?

A. Yes, sir.

Q. Why did you put that card out?

A. Because the price of the card was too low.

Q. You attempted, through that card, to put the price back to where it was on March 9, didn't you?

A. If that is the date, I assume so.

Q. Card 71 was in effect on March 9th, wasn't it; that was issued by your company?

Mr. Stewart: What is this; 1936, you are talking about?

Mr. MacIntyre: Yes.

A. January 8 is the date of card 71.

Q. That was in effect until after the 9th of—after the 11th day of March, 1936, wasn't it?

A. I will have to find 72 for that. March 18, 1936, card 72.

Q. Why did you issue card 73?

A. I answered that question before. Because of the fact that the price of conduit—

Q. Wasn't it, in fact, the reason that you wanted to place the price to a level of what card 71 had announced in January?

A. I can't answer that question.

Q. Why not?

A. That is up to the executives of my company.

1421 Q. Well, you prepared that card and submitted it to the executives of your company. Wasn't that what you were trying to do?

A. They asked me to prepare a card, and I prepared the card and presented it to them.

Q. You don't know why they wanted you to prepare it, is that correct?

A. I would think so.

Q. Well, now, turn to card 76 in Commission's Exhibit 62. I believe your card there is dated March 9, 1937, isn't it?

A. March 11.

Q. March 11. Will you please tell us why you issued that card at that time?

A. I couldn't answer that question. Card 75, card 76. I couldn't answer that question.

Q. Well, can you tell us now as to any of the cards that

you put out, as to why you put them out, where you have changed the price from one level to another?

A. That would be quite a study. You would have to study the price of pipe on down the line and see what happened there to make comparisons with your cards.

Q. But you have your cards before you, and in comparing those cards, one with the other, you can't tell us why as to any of them at this time, can you?

A. No, I cannot.

1422 Q. Is that due to your failure of memory and recollection as to why you did it?

A. No. Because in each case, where you have a change in card, there is a definite story connected with it.

Q. You can't give us the story as to any of them right now?

A. No, I cannot, without—you would have to make a study of each card to see what—to see whether it is an increase or decrease, and then endeavor to make a study as to what the conditions were at that time, and what brought it about.

Q. You attended a meeting with the members of the Rigid Steel Conduit Association here in Pittsburgh on March 11, 1936, did you, Mr. Kim, at the time of the flood?

A. I don't recall that.

Q. Here at the club.

A. At the time of the flood?

Q. Yes.

A. No, sir.

Q. You didn't attend any meeting?

A. Not at that time.

Q. So if any reasons were advanced by anyone there as to why a price was likely to be changed, you would not know about it?

Mr. Houston: I object to it. That is self apparent.

1423 Trial Examiner Norwood: Objection overruled.

Q. What is your answer to that?

A. What was that again?

Mr. MacIntyre: Please read the question.

(The following question was read:

"Q. So if any reasons were advanced by anyone there as to why a price was likely to be changed, you would not know about it?")

By Mr. MacIntyre:

Q. Is that correct?

A. That's correct.

Q. Isn't it a fact, Mr. Kim, that Mr. Bennett told you of some of the reasons that were advanced at that meeting as to why price changes would be brought about within a day or two?

A. I don't recall.

Q. You have no recollection of it?

A. No.

Q. You don't recall anything that Mr. Bennett has ever told you about any of the price changes that your company has participated in, as to the reason for them?

A. Not other than in a general way. We naturally have our conferences, and talk about the market conditions, and so forth and so on.

Mr. Stewart: Excuse me. I didn't hear that.

1424 (Answer read.)

Q. Turn to your card 84 in Commission's Exhibit 62, Mr. Kim. That card is dated what?

A. January 27, 1931.

Q. The record shows that Enameled Metals Company and others issued their card 84 carrying those prices prior to that date. Now, will you please tell us why you issued your card 84 on that date, that is January 27, carrying the prices that it carries?

A. Why?

Q. Yes.

A. When did Enameled Metals publish theirs?

Q. I think the record will show it was several days prior to the date you issued yours.

A. Repeat that question, please.

Mr. MacIntyre: Please read the question.

(The following question was read:

"Q. The record shows that Enameled Metals Company and others issued their card 84 carrying those prices prior to that date. Now, will you please tell us why you issued your card 84 on that date, that is January 27, carrying the prices that it carries?")

A. Well, the answer to that is that we felt that the market was on its way up, and we advanced the price.

Q. Why did you advance it to exactly the same amount that Enameled Metals and the others advanced the market?

1425 A. Well, I believe that is the general practice.

Q. You mean that is the general practice in the industry for all of them to do that?

A. That's right, to have similar basing point price.

Q. And why do you follow such a practice?

A. Because we feel that it is necessary to have a basing point to start with for selling goods.

Q. Why do you think that?

A. Well, you have got to start some place.

Q. Well, why do you feel as to rigid steel conduit that you must start with a basing point at Pittsburgh, and a basing point at Chicago, Illinois?

A. Well, that is a long story. Rigid conduit is made from steel, and the steel industry has used a Pittsburgh base for about 50 years and a Chicago base for about 17 or 18 years.

Q. And you feel that because that is the fact you must use it; is that correct?

A. Well, I assume that when rigid conduit industry first went into business that their basic product was steel, and—

Q. Just a moment, Mr. Kim. I would rather not speculate there, or take assumptions. I am asking you whether you are doing something because of a particular thing.

Mr. MacIntyre: Please read the question.

(The following question was read:

"Q. And you feel that because that is the fact you

1426 must use it, is that correct?")

A. Correct.

Q. That is, your answer to that is yes?

A. Yes, sir.

Q. And why do you answer yes to that question in that way, Mr. Kim?

A. Because I believe it is a logical way to do business. It is the simplest way to arrive at a delivered price.

Q. Would it be just as simple to arrive at an FOB mill price?

A. The customers are not interested in FOB mill price.

Mr. MacIntyre: I move that the witness' answer be stricken. It is not responsive to the question.

Trial Examiner Norwood: Read the question and answer, please.

(Question and answer were read.)

Trial Examiner Norwood: Motion allowed. Now, answer the question.

A. I don't think it would be simpler to figure an FOB mill price.

Q. Why not?

A. Because, in the first place, you would have to study your competitive situation.

Q. Why do you have to study a competitive situation in order to make an FOB mill price, any more than you
1427 do now in making your basing point prices and method of figuring therefrom the delivery price quotations?

A. Because you would have people located in different parts of the country selling the same article you are selling, and you would have to make comparison of freight rates and so forth in order to quote a price that would be competitive with your competitor's price.

Q. And what do you mean "in order to be competitive with your competitor's price"?

A. To have a price at least equal to his price.

Q. Do you mean also by that: and no lower than his?

A. It could possibly be lower. I might even go to work and make the price lower.

Q. Do you consider a competitive price one that is lower than your competitor's?

A. Yes, sir.

Q. Do you attempt, in the issuance of your price cards, such as your price card 84, to make it any lower than your competitor's?

A. Do we attempt to?

Q. Did you attempt in that instance to make it any lower than your competitor's?

A. You mean when the card was made up?

Q. Yes.

A. No, sir.

1428 Q. Why not?

A. No reason for it.

Q. You stated to us that you could be competitive by making it lower. Now, why didn't you make it lower and be competitive, in that instance?

A. You say why make it lower and be competitive?

Q. Why didn't you make it lower in that instance and be competitive?

Mr. Houston: I object to the question. I think it is misleading the witness.

Trial Examiner Norwood: Read the question.

(Last question read.)

A. In the first place, when we made the card, we thought we would be competitive.

By Mr. MacIntyre:

Q. You know, and knew at the time you issued it, it was no lower than your competitors' price cards, didn't you?

A. That is true.

Q. So your term "being competitive," then, means also being the same as your competitors; is that correct?

A. That is correct.

Q. And when you answered my other question a few minutes ago, that you attempt to be competitive at all destinations throughout the United States, you would also mean that you are attempting to make your prices the
1429 same as your competitors' at all destinations in the United States; is that correct?

A. That is a pretty long question.

Mr. MacIntyre: Read the question.

(Last question read.)

A. We at all times try to be competitive. That would be my answer to that.

By Mr. MacIntyre:

Q. And you told us you mean by being competitive, making the prices the same as your competitors', as you did under card 84.

Mr. Stewart: I submit he is arguing with the witness. Obviously the witness has said he tries to be competitive.

He said his price at least equalled his competitor's, and sometimes is lower. Now, he is getting into argument.

Trial Examiner Norwood: I think he is trying to find out whether on this question he was trying to be competitive by quoting lower, or trying to be competitive by equalling the price, and he has a right to find that out.

Mr. Stewart: That is not the question, though.

Mr. MacIntyre: Read the question.

(Last question read.)

The Witness: Read it again, please.

(Last question read.)

1430 Trial Examiner Norwood: Is that a fact?

A. Sure.

By Mr. MacIntyre:

Q. Mr. Kim, you are acquainted and clearly recall the method that you set forth on your price card for figuring delivered price quotations?

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A. Yes, sir.

Q. You recall that statement which provides for the figuring of delivered prices from the basing point prices?

A. That's right.

Q. You have seen price cards put out by your competitors throughout the period of time that you have been with your company, haven't you?

A. Yes, sir.

Q. And you have noted in their price cards throughout that period a provision for figuring delivered price quotations in exactly the same manner, haven't you?

A. That's right.

Q. Have you seen any price cards, open or published prices, made by your company or any of your competitors, which provided for price quotations on any other basis than the methods provided for in your cards which are in evidence here, that is, through the use of any other method of determining the prices than the method provided in those cards?

1431 A. Well, the method that is in use at the present time was not in use a long time ago.

Q. Within the past 15 years have you known of any other—

A. The past 15 years? Well, I would have to look at the time they start. I couldn't tell you whether it is 15 years or 10 years ago.

Q. Let us take your price card 69, which is in evidence here as a part of Commission's Exhibit 62. It is dated July 17, 1933, I believe.

I will ask you to state whether or not that you notice since that date, any price quotations, published price quotations of your company or any of its competitors, which provided for any other method of determining the price for the buyer than is provided in those cards of your company, in evidence here?

A. I don't think so.

Q. That is, you don't think that you have ever seen any providing any other method since that date?

A. Of course, there are some parts that are different in this.

Q. But as to the method—

A. As to the method of figuring delivered price, I think it followed the same—

Q. As to the method of figuring any price. Have you

seen cards of your company or any other company
1432 providing for any method of figuring any price any different than the method provided in those cards, Commission's Exhibit 62?

A. I don't think so.

Q. Do you attempt to keep up with what is going on in the—

A. I try to, yes.

Q. Do you think you would have known about it if there had been any other method used by your company or any of its competitors?

A. I think so.

Q. And yet you, at this time, know of none?

A. I couldn't recall any.

Q. Isn't it a fact, Mr. Kim, so long as you and your competitors use this method of quoting prices, and use the same basing point price, the same freight factors, the same delivery charge factors, that the delivered price quotations for all, at any given destination at any given point of time, will be the same?

A. If they definitely use the card plus the present system of finding your delivered price, it would.

Q. They would all be the same?

A. Yes, sir.

Q. All of them?

A. Yes, sir.

Q. Have you and your competitors used, in the period of time that you have been with the National Electric
1433 Products Corporation, any method of figuring prices which assured to you and to your competitors as much uniformity or maximum of delivered price quotations as this method about which you have testified?

Mr. Houston: I object to that question. It is the old wife-beating question.

Trial Examiner Norwood: I think you can ask him whether or not he has ever used a different system, which produced identity of price quotations. He has said this one produces identity of price quotations.

You may show whether or not he has used any other method of producing price quotations.

This brings up the same question we had yesterday, and I did not have time to examine the record until just this noon, and I was mistaken in my statements here with respect to that question, in the statements as shown on page

1313, and I said there: "It is not a question of whether they could possibly have employed some other method."

My remarks there do not cover this case at all, because he has a right to show whether or not they ever employed any other method which produced identical price quotations, and the witness might have been permitted here to answer this question as formed yesterday; to answer this question that appears on page 1312.

1434 At any rate, I shall overrule the objection on this and permit him to answer that question. I mean, if the counsel will reform it as indicated. You may show whether or not they have ever used any other method which produced identity of price quotations; other methods than the one in question here.

Mr. MacIntyre: If your Honor please, this question does involve, as Mr. Houston pointed out, the question of beating the wife, so to speak.

The witness has already told us that such result is obtained through the method he has been using.

Now, the pending question, in the wording that it carries at present, merely asked whether or not he can as effectively, or whether he has as effectively, I will say, accomplished that result through any other method during these years, so, consequently, if a man beats his wife one time, and he already has admitted that he has, you, of course, can ask him if he has, as effectively, beaten his wife with a different kind of a weapon.

Trial Examiner Norwood: I don't think it is necessary to ask that question as it is.

I think counsel can ask him there whether or not he has ever employed any other method of producing price quotations. I think he should be satisfied with that.

I will sustain the objection to the question in its present form, and the counsel may ask that, if he wishes.

1435 By Mr. MacIntyre:

Q. Mr. Kim, to your knowledge, have you and your competitors used any method of figuring prices which permitted you and them to secure uniformity or maximum of delivered price quotations, as you do under the method which you have described here this afternoon?

A. I can't answer for my competitors. You asked me if my competitors, I and my competitors.

Q. What about your company?

A. My company, if it is going to quote, its card quotes according to its—

Trial Examiner Norwood: The question is as to your company, whether or not you employed any other method to produce a common price with your competitors.

A. Prior to the time, before the freight adder system was used, there was a different system of figuring delivered price.

By Mr. MacIntyre:

Q. That was prior to 1930?

A. Yes.

Q. You don't know of any method that you and your competitors have used since 1930 which had produced identity or raising of delivered price quotations?

A. I don't know of any that my company used, no.

Q. Well, you do know something about what is
1436 going on in the trade as to your competitors, as you have already told us about?

A. The reason I can't answer that question is on open bids that I saw, the prices were different than mine, and certainly they didn't use the same method, or they would arrive at the same figures.

Q. Now, on that point, where you and your competitors have arrived at the same figures, in submitting bids to the Federal Government under seal, I show you Commission's Exhibit 318, being a tabulation of bids opened by the Panama Canal Commission on June 17, 1935, in which you and your competitors submitted bids of $8,188.90. Will you tell me how you arrived at the price that you quoted?

A. Well, this here, everyone except one quoted the card, and used their regular delivery, I would say.

Q. You would say the card that was in effect?

A. The card that was in effect at that time.

Q. And, now, looking back at Commission's Exhibit 62, which is your price card 70, will you tell us which one of those you used in arriving at that result as is shown on Commission's Exhibit 318? Is that your card 70?

Trial Examiner Norwood: We will take a five minute recess.

(A recess was had.)

Mr. MacIntyre: Read the question, please.

1437 (Last question read.)

By Mr. MacIntyre:

Q. Can you tell us whether you used card 70 on that, Mr. Kim?

A. I couldn't say. The bid here, the resume of the bid here, states that a total of 111,000 feet of galvanized rigid steel conduit. It doesn't give the size. There was evidently a variation of sizes. So you couldn't break it down. There wouldn't be any possible way to break it down. You would have to definitely know the sizes in order to get that.

Q. Now, then, can you explain, Mr. Kim, the uniformity or matching of prices in that bid by you and your competitors?

Mr. Stewart: I submit, if the Examiner please, that it is immaterial as to how he explains it.

Trial Examiner Norwood: Well, I don't think so.

Mr. Stewart: How would he know anything about how the competitors calculated their prices, when he doesn't know how he calculated his own?

Trial Examiner Norwood: Let's find out. Objection overruled.

Read the question.

A. Well, it looks pretty much like the method used to figure it must have been all the same, in order to
1438 arrive at the same price. There is just one concern there that used something else.

By Mr. MacIntyre:

Q. How can you explain how each of the bidders, including yourself and your competitors, would know what card to use, as well as the method, in arriving at the same price, the matched price, as they did in that case?

A. I can't explain it.

Q. Is it customary for you, in submission of bids to the United States, under seal, such as you did in that case there, to figure prices from one of your price cards, using freight added books, freight rates, and the method that you have been telling us about here today?

A. Not always.

Q. Well, I am asking you if it is customary for you to do that.

A. Well, it hasn't been for some time.

Q. Well, when you say "for some time," what do you mean?

A. Well, I mean it would depend a good deal on what the conditions were on the bid that was taken previously.

Q. You haven't used that method regularly since the Complaint in this case was issued, have you?

A. I have not used it regularly since this Complaint?

Q. In submitting bids to the Federal Government.

A. I'd say on the last bid that was bid, why, yes,

1439 we have used the same method that we used before.

Q. But there have been some since this Complaint was issued that you have not used it; isn't that the case?

A. I wouldn't say; I wouldn't bring that in. That has nothing to do with the method of our doing business.

Q. I am asking you as to the fact as to whether you have used the method consistently since the Complaint was issued.

A. I just can't answer that question the way you put it.

Q. Don't you know whether you have consistently used the method in the last several months in submitting bids to the Federal Government under seal?

A. I still don't know how to answer the question.

Trial Examiner Norwood: You either know or you don't know.

A. I know this, that we at the present time are quoting our card.

By Mr. MacIntyre:

Q. To the Federal Government or anyone else?

A. To the Federal Government or anyone else; that's right.

Q. If they make awards to you, they pay you the card, then; is that correct?

A. Yes, sir.

Q. Mr. Kim, I show you Commission's Exhibit 80, which includes several booklets marked from Commission's

1440 Exhibit 80-A to 80-Z-53. I ask you to state if all of the booklets in that group are duplicates of freight rate bulletins used by your company in calculating delivered price quotations in the manner that you have outlined to us here since you have been on the stand?

A. They are.

Mr. MacIntyre: If your Honor please, I now offer into evidence Commission's Exhibit 80-A, booklet of four sheets; 80-B, a booklet of four sheets; 80-C and D, one sheet; 80-E and F, one sheet; 80-G, a booklet of 12 pages, and one page

supplement attached thereto; 80-H, a set of correction sheets to a bulletin, consisting of five pages; 80-I, a booklet consisting of 12 pages; 80-J, several attached lists of correction sheets, consisting of 12 sheets.

Trial Examiner Norwood: You mean 12 pages?

Mr. MacIntyre: 12 pages.

80-K, consisting of four pages; 80-L, consisting of four pages; 80-M; 80-N, consisting of four pages; 80-O, a booklet consisting of 12 pages; 80-P, a booklet consisting of 12 pages; 80-R, a booklet consisting of 12 pages; 80-S, consisting of two pages; 80-T, consisting of four pages; 80-U, one page; 80-V, a booklet consisting of 13 pages; 80-W, consisting of two pages; 80-X, consisting of 11 pages; 80-Y, consisting of two pages; 80-Z, consisting of
1441 four pages; 80-Z-1, consisting of one page; 80-Z-2, consisting of one page.

Trial Examiner Norwood: 80-Z consisting of how many pages?

Mr. MacIntyre: Four pages.

Trial Examiner Norwood: Go ahead.

Mr. MacIntyre: Z-1, consisting of one page; 80-Z-2, to 80-Z-12, a part of a booklet consisting of pages 3 to 12-A, inclusive, and marked, for identification, as 80-Z-2 to 80-Z-12, inclusive; one sheet marked, for identification, as Commission's Exhibit 80-Z-13; and one sheet marked, for identification, as Commission's Exhibit 80-Z-14; and a booklet marked, for identification, as Commission's Exhibit 80-Z-15 to 80-Z-24, inclusive; a booklet marked, for identification, as Commission's Exhibit 80-Z-25 to 80-Z-41, inclusive; and Commission's Exhibit 80-Z-42 and 80-Z-43; a booklet marked, for identification, as Commission's Exhibit 80-Z-44, consisting of four pages; one marked, for identification, as Commission's Exhibit 80-Z-45, consisting of four pages; a sheet marked, for identification, as Commission's Exhibit 80-Z-46 and 80-Z-47; a sheet marked, for identification, as Commission's Exhibit 80-Z-48 and 80-Z-49; and a booklet marked, for identification, as Commission's Exhibit 80-Z-50, consisting of 12 pages; and a sheet marked, for identification, as Commission's Exhibit
1442 80-Z-51; and one marked, for identification, as Commission's Exhibit 80-Z-53.

I offer these in evidence as the freight rate booklets and supplements thereto as used by Respondent National Electric Products Corporation.

Trial Examiner Norwood: Received as marked.

COMMISSION'S EXHIBITS NOS. 80-A to 80-P, 1443 inclusive, COMMISSION'S EXHIBITS NOS. 80-R to 80-Z-51, inclusive, and COMMISSION'S EXHIBIT NO. 80-Z-53, were offered and received in evidence.

By Mac Intyre:

Q. Mr. Kim, I show you Commission's Exhibit 80-Q, and ask you to state if you recognize that, and if so, as what?

A. That is a freight adder.

Q. A freight adder book as used by your company?

A. Yes.

Q. I show you Commission's Exhibit 80-Z-55, and ask you to state whether or not you recognize that, and if so, as what?

A. That is a freight adder book.

Q. Used by your company?

A. Used by our company; yes, sir.

Q. And both of these that you referred to, Commission's Exhibit 80-Q and 80-Z-55, were used by your company in computing delivered price quotations?

A. That's right.

Q. Can you tell me where you secured the information which is included in those booklets?

A. Where I secured that information?

Q. Yes.

A. There was one prior to that one, which was the 1444 originator of that.

Q. This 80-Q is dated November 20, 1930.

A. There is one prior to that.

Q. Is that date November 20, 1930, in your handwriting?

A. No.

Q. Asking you again about this Commission's Exhibit 80-Q, you say that is a freight adder book used by your company during the year 1930?

A. That's right.

Q. Now, I ask you, Mr. Kim, where you secured the information which—

A. I think the first book that was published, was published by Youngstown Sheet & Tube Company. And that particular one there was published by Youngstown Sheet & Tube Company. The first one was published by Youngstown Sheet & Tube Company.

Q. When you say "that one there" you are referring to—

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A. Well, no, I will take that back. I don't know about—

Q. You are referring to Commission's Exhibit 80-Q?

A. I am referring to the oldest, and that is the one for per thousand feet. That was originally compiled by the Youngstown Sheet & Tube Company.

Q. Where did you get the information that was included in the second one of those books, Commission's Exhibit 80-Z-55?

1445 A. I just can't answer who was the originator of that, except that the price—I believe the card was for per thousand feet, and then it was changed for per hundred feet, and then, naturally—the freight adders were changed to per hundred feet instead of per thousand feet, but who originated that, I couldn't say.

Q. It was fairly recent, wasn't it, say, four years ago?

A. I haven't a very good memory so far as years are concerned. It might have been four years, and it might have been five years ago.

Q. And yet you can't tell us?

A. I may have been myself. I couldn't say. In fact, I believe we were the first ones to put one out for per hundred feet. I am not sure.

Q. You say that your recollection as to the period of time, the best that you have, is for the year 1938 or 1937?

The Witness: May I have that question again, please?

Mr. MacIntyre: Read the question, please.

(Last question read.)

A. I don't know where that originated from.

By Mr. MacIntyre:

Q. You don't know where that originated from?

A. No.

Q. The one that shows the hundred feet?

1446 A. No.

Q. That is Commission's Exhibit 80-Z-55.

A. I don't recall.

Q. Who, in your organization, handles such matters, in addition to you; especially those relating to adder business?

A. What do you mean by that?

Q Who, in your company, in addition to you, would have anything to do with preparing freight adder books, prepared by your company?

A. Do you want the names?

Q. Yes.
A. We have a large clerical force we put to work in calculating stuff like that.
Q. And under whose supervision would they work?
A. My supervision.
Q. And you don't recall having given them any work to do in working out the freight adder book?
A. You mean—you are talking about the one per hundred feet, now?
Q. Yes.
A. No, I don't recall that. I will be honest about it.
Q. Mr. Kim, back in 1937 and 1938 you served as a member of the Transportation Commission—Transportation Committee in collaborating with Mr. Charles
1447 Donley in looking up freight rates; is that correct?
A. Except I didn't collaborate with Mr. Donley.
Q. Did you talk to him about freight rates?
A. I may have talked to him but that particular committee never functioned.
Q. Who was on that committee with you?
A. I believe a man by the name of Walsh.
Q. What company was he with?
A. With the Youngstown Sheet & Tube Company.
Q. And what was his first name?
A. William Walsh, I think.
Q. And who else?
A. I think Matthews.
Q. What company was he with?
A. Central Tube, I think; at that time.
Q. And what was his first name?
A. Joe.
Q. Who was chairman of the committee?
A. I was.
Q. Would you say that you discussed freight rate matters at the time you were chairman of that committee with Mr. Charles Donley?
A. I may have.
Q. Well, don't you recall that you did?
A. No, sir, I do not.
1448 Q. Don't you recall discussing with Mr. Charles Donley during 1938 the matter of having him to include in his freight rate bulletins, some showing of what freight rates were on store door delivery?
A. I might have.

Q. Don't you recall that you did, Mr. Kim?

A. No, I do not.

In the first place, Mr. Donley is the traffic manager for the National Electric Products Corporation and prepares our rates, and I may have spoken to him. There is no question about that. I may have spoken to him when the railroads put in the store door delivery clause.

Q. When you were serving on that committee back during that period of time, as chairman of it, and at the same time Mr. Walsh of the Youngstown Sheet & Tube Company was on the committee and Mr. Matthews of the Central Tube Company was on the committee, were they working with you in getting out material for the National Electric Products Corporation?

A. No, sir.

Q. How come they were on the committee with you, then?

A. The committee never even met.

Q. Who put them on the committee with you?

A. Who put them on the committee?

1449 Q. Yes.

A. The Rigid Steel Conduit Association, I assume.

Q. The Rigid Steel Conduit Association?

A. I assume it was the Rigid Steel Conduit Association.

Q. Who put you on the committee?

A. Who put me on the committee?

Q. Yes.

A. I couldn't tell you that.

Q. Would you say that your best recollection is that the Rigid Steel Conduit Association had you put on the committee?

A. I would say so.

Q. What did you understand the purpose of your being put on the committee was?

A. I assume that it was to get some method of handling freight rates furnished to the Association.

Q. By Mr. Donley?

A. I assume so. I don't know.

Q. Isn't it a fact that your recollection is that that was the purpose of you being put on this committee?

A. I don't just recall what the purpose of the traffic committee was to be. I don't recall that.

Q. When did you cease to be a member of the committee?

A. I don't know. I don't think we were ever discharged.

Q. In other words, there has never been a dissolution?

A. That's right. It never reported, and it never
1450 was discharged.

By Mr. MacIntyre:

Q. Have you made it a practice, Mr. Kim, of attending meetings of the Rigid Steel Conduit Association?

A. Not very often.

Q. Mr. I. A. Bennett of your concern attended the meetings for your company; is that correct?

A. I think in most cases he did.

Q. And any meetings of the National Electrical Wholesalers Association attended by any member of your company was attended by Mr. Bennett; is that correct?

A. Not always.

Q. Did you attend any of those?

A. Only those that were held in Pittsburgh.

Q. But you knew of his attendance at such meetings at places outside of Pittsburgh?

A. I would say so, yes.

Q. Mr. Kim, I show you Commission's Exhibit, for identification, 682-A and 682-B, also 683-A and 683-B. Do you recognize those documents, and, if so, as what?

A. These are specific building job contracts.

1451 Q. They are forms of contracts of specific building projects?

A. Yes, specific building jobs.

Q. Which your company used?

A. That's right.

Q. When did your company use those forms? During the year 1937 and 1938?

A. Yes, I would say so.

Mr. MacIntyre: If your Honor please, I offer those two forms into evidence as the specific building contract forms used by the National Electric Products Corporation during the years 1937 and 1938.

Trial Examiner Norwood: Is there any objection?

(No response.)

Trial Examiner Norwood: Received as marked.

COMMISSION'S EXHIBITS NOS. 682-A and B and 683-A and B were offered and received in evidence.

By Mr. MacIntyre:

Q. Mr. Kim, I show you Commission's Exhibit 664, and ask you to state if you recognize that, and, if so, as what?

A. Consigned stock agreement.

Q. That is a consigned stock agreement form used by your company?

A. That's right.

1452 Q. During 1937 and 1938?

A. I would say so. There was one year there was a supplement issued, I guess.

Q. I show you a sheet of paper dated July 21, 1938, with some mimeographed statements on it. Is that what you are talking about, in the form of a supplement (handing document to witness)?

A. Yes, that is it.

By Mr. MacIntyre:

Q. How long was this supplement, which is dated July 21, 1938, in effect as a supplement to the contract form, which is Commission's Exhibit 664?

A. I am sorry. I can't answer that. I can't give you the exact time.

Q. But it did not become effective until July 21, 1938; the date shown there?

A. I cannot state when this was withdrawn.

Mr. Stewart: It was withdrawn, was it?

The Witness: I believe it was, yes. I think it has been withdrawn. When, I couldn't say. I couldn't say 1453 the exact time it was withdrawn.

By Mr. MacIntyre:

Q. But for a period of time after July 21, 1938, it was in effect?

A. Yes, sir.

Mr. MacIntyre: If your Honor please, I ask that this be marked, for identification, with another exhibit number. I don't believe we are going to be able to accept it as a part of 664.

Mr. Stewart: I don't object.

Mr. Robison: There can't be any objection to that.

Trial Examiner Norwood: Does counsel object to this being received as 664-B?

Mr. Robison: I have no objection to having it marked

664 with any attached letter, but I do object to it being accepted as what has been designated by Mr. MacIntyre as a supplement to something. I am willing for it to go in evidence for whatever it may be; or purport to be.

Trial Examiner Norwood: And it is agreed it was attached to the paper which is now Commission's Exhibit 664; is that right?

Mr. Robison: I know nothing about that.

Mr. Stewart: I don't remember seeing the paper, but I do remember when the document was offered there
1454 was some objection to what was attached, and it was torn out, and if Mr. MacIntyre says it is that, I have no objection.

Trial Examiner Norwood: I shall direct the reporter to mark the old exhibit 664-A and mark this 664-B, and 664-B is now received in evidence.

COMMISSION'S EXHIBIT NO. 664-B was offered and received in evidence.

(Thereupon, upon direction by the Trial Examiner, Commission's Exhibit 664 heretofore received in evidence was re-marked Commission's Exhibit 664-A.)

By Mr. MacIntyre:

Q. Mr. Kim, I show you Commission's Exhibit 664-A. I believe you have told us that that is a contract form of a consigned stock agreement?

A. Yes, sir.

Q. Used by your company during 1937 and 1938?

A. Yes.

Q. And now I believe you have identified Commission's Exhibit 664-B as a supplement to that for which was adopted and used by your company on and after July 21, 1938, for a period of time; is that correct?

A. That's right.

Q. You don't know when it was withdrawn?

A. No, I couldn't say.

1455 Q. Mr. Kim, is it necessary, in order for you and your competitors to continue the use of the method of figuring delivered prices on the basing point method which you have described here this afternoon, to discuss with each other and talk with each other about it?

Mr. Stewart: I object to that question as incompetent, irrelevant, and immaterial, it being a left-handed way to try to prove something that is perfectly obvious.

Mr. Houston: Your Honor, I would suggest the question would be: Does he?

Trial Examiner Norwood: He may show whether or not this method may be employed without the resort by these Respondents to consultations. I think that is what the question is directed to.

Mr. MacIntyre: My question goes to consultations and written communications between them; as to whether it is necessary for them, now, to do that in order to continue the use of that method.

Mr. Stewart: I think it is a question of not whether it is used now or whether it was ever necessary. Why don't you ask it that way?

Trial Examiner Norwood: Objection overruled.

Answer the question.

Mr. MacIntyre: Read the pending question to the
1456 witness.

(Last question read.)

A. There is no necessity at any time to talk to anybody about the method used.

By Mr. MacIntyre:

Q. You can continue to use it, then, without corresponding with them or talking with them about it?

A. Definitely.

Mr. MacIntyre: That is all.

Trial Examiner Norwood: Cross-examine.

Cross-Examination by Mr. Stewart.

Q. Mr. Kim, how long have you been in the conduit business with National Electric Products?

A. I have been with the National Electric Products Corporation for 28 years.

Q. For 28 years?

A. Yes, sir.

Q. And how long has the consigned stock method of doing business been in use by the National Electric Products Company?

A. Well, as long as my time.

Q. What is the function of the freight adder book, about which Mr. McIntyre inquired, in the industry?

A. Why, I would say that it is the simplest method,
1457 so far as we know, that anybody has ever introduced in order to find a delivered price in an easy manner.

Q. Can you be a little more explicit as to the part it plays in converting conduit in terms of feet into—

A. You mean the freight adder as per hundred feet?

Q. Yes. Would you explain what that does?

A. Well, in the first place, all the freight adders is is that you take the weight of the pipe, the half inch pipe, we will say, at a 10¢ freight rate, and they carry it through every half cent. If a freight rate was 10½¢, they would use a 10½¢ freight rate.

Q. Without the freight adder book, how would you figure that?

A. Without the freight adder book, you would have to figure your price on your conduit, and take your weight times the freight rate and add it on there.

Q. And is this freight adder book simply a compilation?

A. That's all it is; just simply a compilation.

Q. During the time that you have been in the conduit business, what has been your observation as to the extent to which the price cards had been observed by the industry?

Mr. MacIntyre: Just a moment. I object. The only question that I asked concerning that was card 84. If he wants to go into others, of course, it won't be necessary
1458 for me to go into them in order to get at what Mr. Stewart is asking.

Mr. Stewart: No. You asked if all the members of the industry followed the cards and formula, would they arrive at the same result, and the obvious answer was yes. Now, I am asking him: do they do that in fact. That is what I want to know.

Trial Examiner Norwood: The objection is overruled.

A. No, they do not.

By Mr. Stewart:

Q. Well, can you tell us what part or what function the card has played in the conduit industry, in practice?

Mr. MacIntyre: Now, just a moment. I submit that would call for a conclusion of fact, rather than an evidentiary fact.

Let us find out, in response to specific questions, as to what was done with the cards, and the Commission and the Court will determine then what has been the effect of the handling of the cards in the manner described.

Trial Examiner Norwood: I think counsel should make his question such as would elicit a factual answer, there.

By Mr. Stewart:

Q. Well, what is the fact, Mr. Kim, with regard
1459 to the adherence to the cards by the conduit industry, during the period of time you have been in the industry?

A. Well, you would find the story pretty sad in some cases.

Of course, the question of supply and demand is always the guidance as to whether or not the peak price is obtained. Quotations have gone in as high as one 5, two 5's, three 5's and, in fact, I have, in my days, sought quotations already as high as eight 5's off the card.

Q. While you understand what the eight 5's mean, will you explain to the rest of us what that means?

A. That means if you had a base of $5, you would reduce that, you would take 5% off of that eight times.

Trial Examiner Norwood: You would take them off one by one—

The Witness: You would take five off, and you take another five off, and you keep on going down the ladder, and after you had the eight 5's off, you would have the price that was quoted.

By Mr. Stewart:

Q. To what extent has the law of supply and demand played a part in determining whether or not the card was to be observed?

A. To what extent?

1460 Q. Yes.

A. To a very, very great extent, because of the fact that the conduit industry has gone—the demands have decreased rather than gone up, like a lot of other lines of materials. It has kept on going down and I don't believe today yet it has ever reached its peak back to where it was years ago.

Mr. Stewart: That's all.

Cross-Examination by Mr. Robison.

Q. Mr. Kim, in testifying regarding preparing of card 84, you said that now you quote both to the Government and to everybody else at the card price.

A. That's right.

Q. What is the reason for that?

A. The reason why we do that today?
Q. Yes.
A. Because of the great demand for conduit today.
Q. You mean that the present market is what is called a seller's market rather than a buyer's market?
A. That's right. The present market is a seller's market today. Yet, I might add to that that even as late as a few weeks ago somebody wanted a piece of business and cut the price.
Q. Was that some particularly large piece of business?
1461 A. A very large piece of business; very large.
Q. Who was the buyer?
A. The buyer?
Q. Yes.
A. The War Department. It was on a building job.
Mr. Robison: That is all.
1462 Mr. Stewart: I do want to ask him one more question.

By Mr. Stewart:

Q. Mr. Kim, what is your practice with regard to quoting FOB mill, if a customer desires?
A. We wouldn't hesitate at any time to give a customer the FOB mill price, if he asked for it.
Q. Based on your experience in the business has there been any demand for such quotations as a general rule?
A. No, sir.
Q. And why is that?
A. Well, the consumer, the ultimate consumer, who is the electrical contractor, is not in anyway interested in any other price than a delivered price. If you were to quote him an FOB mill price, he would immediately come back and ask the freight, so that he could figure what his delivered price was.
Mr. MacIntyre: If your Honor please—
Mr. Stewart: That is all.
Mr. MacIntyre: ust a moment. As to the last part as to what somebody would do if you did something to them, I move that part of the answer be stricken as speculative.
Mr. Stewart: There is no speculation. He is giving his experience.
Trial Examiner Norwood: He is giving that for
1463 his reasons for preferring not to quote FOB mill.

I think he can make the explanation to give the reaction of the trade toward his methods. Motion denied.

Mr. Stewart: That is all.

Redirect Examination by Mr. MacIntyre.

Q. As to these contractors you just talked about, as to what they would do if you did something, do you know as a fact that those contractors do not pay for the conduit they use in buildings they construct, that somebody who buys the building pays for the conduit ultimately?

A. Certainly, certainly.

Q. Consequently, in order to get their money back, the only thing that is necessary to do is to add something to the price of the building, and pay that over to you; is that correct?

A. That might be. That depends upon the job.

Q. Can you cite me any instance where you have ever quoted an FOB mill price to anyone?

A. Yes, I can cite—I can't give you exact dates.

Q. Approximately when?

A. Approximately when?

Q. Yes.

A. Well, I think there was an inquiry here just a short time ago from the War Department that asked for 1464 bids both delivered and mill, just a short time ago.

Q. Did you quote them FOB mill?

A. Yes, sir.

Q. Why?

A. Because they asked for it.

Q. That was a customer who used his money in paying for the goods and not for resale, wasn't it?

Mr. Stewart: Just a moment. I object to that as being argumentative.

Trial Examiner Norwood: I don't think so. Let him answer it.

Mr. Stewart: Well—all right.

A. That's right. But he placed the business at a delivered price, just the same.

Q. Was that the instance you told Mr. Robison that the price was cut?

A. Mr. Robison?

Q. Mr. Robison, there a few minutes ago.

A. That was no sealed bid.

Trial Examiner Norwood: Was that FOB mill bid that you made, was that the Pittsburgh base price?

The Witness: That would be the Pittsburgh base price, yes, sir.

Q. Would the Government pay freight from Pittsburgh to the points they wanted?

1465 A. Yes, sir, they have to pay freight just the same.

Q. Now, as to these FOB mill bids, if the Government or any other purchaser bought from you FOB pittsburgh, and had the privilege from you of hauling by truck, water, or otherwise, at any rate lower than the rail rate, they would effect a savings to themselves that they could not effect if they purchased from you under your Pittsburgh basing point delivered prices; is that correct?

A. In the first place he couldn't get a lower rate, unless he hauled the stuff by his own truck.

Q. By water or truck, I am talking about.

A. If he hauled it by water, why, he could get a delivered price by water, if there was a possibility to deliver it by water. He would ask for water price, and you would quote him a water price.

Q. As is provided for in your freight rate bulletins showing water rates?

A. If the freight rate wasn't shown there, you would obtain the freight rate and make the quotation based on that freight rate, using the adder; the freight adder, of course, would work out the same way.

Q. What about the customer in Wheeling, West Virginia, who would like to haul from your plant in Pittsburgh by his own trucks, could he effect any savings if he hauled it by truck over and above your rail rates from Pittsburgh to Wheeling?

1466 Mr. Stewart: Now, just a moment. I think that assumes that he knows the cost of operating the truck, and a few other questions.

Trial Examiner Norwood: He can say so if he doesn't. Objection overruled. Go ahead.

A. Do you want me to answer the question?

Trial Examiner Norwood: Answer the question.

A. The only answer I can give to the question is that it must cost him more, because they don't do it.

Q. You don't know what the situation is?

A. No, I couldn't tell you.

Q. Have you ever told any of your buyers that they could buy it on that basis?

A. Not necessarily, no.

Q. Now, you told Mr. Stewart and Mr. Robison that supply and demand was what determined whether you will adhere to your cards?

A. Yes.

Q. Do you recall what the supply and demand conditions were in 1936 and 1937?

A. 1936 it must have been pretty far down in the dumps.

Q. So according to the testimony you have given here today, if supply and demand were the controlling factors, that is that the supply and demand were the controlling factors, you wouldn't have adhered to the prices—

1467 your cards would vary little during that period of time; is that correct?

A. That's right.

Q. Do you recall that as a period when Mr. Herbert S. Blake and the Organization Service Corporation was managing the activities of the Rigid Steel Conduit Association?

A. I don't know whether he was or not at that time. You are talking about 1936 now?

Q. And 1937.

A. 1936 was when the bottom dropped out, I believe, St. Patrick's Day.

Q. You don't recall—

A. Then about—a short time after that, I assume a year or so after that, Blake came into the picture, that's right.

Q. Now, you spoke about having a consigned stock agreement for quite a period of time.

Mr. Stewart: That wasn't the question I asked him. I asked him as to whether they had done business on a consigned stock basis.

Trial Examiner Norwood: That's right.

By Mr. MacIntyre:

Q. Did you ever do business on a consigned stock basis without having a consigned stock agreement, Mr. Kim?

A. I don't think so. I don't think so.

Mr. Stewart: That still wasn't the question I asked him.

1468 Trial Examiner Norwood: Well, how long has this

consigned stock system obtained generally in the trade, if it has?

The Witness: As long as I can remember.

Trial Examiner Norwood: That is generally in the trade?

The Witness: Generally in the trade.

By Mr. MacIntyre:

Q. Now, Mr. Kim, I show you Commission's Exhibit 664-A. Can you tell me when it was that you adopted a consigned stock agreement form, which is represented by that exhibit, and containing the precise provisions set forth in it?

Mr. Stewart: I object to that. First, it is not redirect examination—

A. I can't tell you that.

Mr. Stewart: And secondly as asking the witness for an impossible answer, unless he takes the two documents and compares them paragraph by paragraph.

Trial Examiner Norwood: Read the question.

The Witness: Here is one—

Mr. Stewart: Wait a minute.

(Question read.)

Trial Examiner Norwood: I think he may bring out that explanation, in view of the fact that you have shown that they are using that method. Objection overruled.

1469 A. This is the same one you showed me before (indicating a paper)?

Q. This is the one I showed you before.

A. Down here is a date "Revised April '37."

Q. Does that mean to you that that form with its provisions as shown in it was revised by you and used by you as from April, 1937?

A. That there particular thing there would tell me that there was a form prior to this time that was revised in April, 1937.

Q. To conform to this form 664-A?

A. This is the revised one right here. This is the revised one right here.

Q. So your understanding is, then, from what you see in the form, and on the form, that it was effective in its precise terms from April, 1937?

A. Well, to get the exact effective date of this, you would have to have the correspondence that sent that out

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to your consigned stock customer. This may have been—that is the date it was printed.

Q. Yes.

A. So it may have been a month after that, or it may have been a week after that.

Q. Yes. But shortly thereafter?

A. Shortly thereafter, no doubt it was put in use.

1470 Q. Mr. Stewart asked you about the freight adders. From your experience in handling those freight adders or delivery charges, Mr. Kim, don't you know that if you took the freight rate on several thousand feet of one-half inch conduit, and totalled it, that is without the use of the freight adders, and then used the freight adders in computing the total freight rate factor on that same amount of conduit, that you would get two different results?

A. Yes, sir, I do.

Mr. MacIntyre: That is all.

Recross Examination by Mr. Stewart.

Q. Why is that, Mr. Kim?

A. In computing your freight adder book, you have fractions that you either add on a whole cent or you drop it, see? Well, when you are taking your actual freight, you are not dropping any fractions at all, see? So when you figure it out, you will see a slight difference between the one and the other.

Q. As I understand you, experience has demonstrated that the freight adder book is the only practical method of carrying on your conduit business, is that it?

A. That is the best one that anyone has ever offered, that is what I would say.

Mr. Stewart: That is all.

1471 Mr. MacIntyre: I have one question on that.

Redirect Examination by Mr. MacIntyre.

Q. You mean by practical means of carrying on business, you mean in quoting prices; is that correct?

A. Mr. Stewart asked me that question in a different way. He asked me if that was the only one, or something —what was it?

Mr. Stewart: Practical one.

A. (Continuing.) Practical one, and I said yes it was so far.

By Mr. MacIntyre:

Q. You mean with respect to the use of your method in quoting prices; is that correct?

A. Well, stick to the adder book, because it simplifies the method.

Q. Of quoting prices?

A. Of quoting a delivered price.

Q. You didn't mean by any answer you gave Mr. Stewart that it was any practical means of arriving at a freight rate which is charged on the shipment?

A. Oh, no, no.

Mr. MacIntyre: That is all.

(Witness excused.)

Trial Examiner Norwood: Call your next witness.

1472 Do you want a recess?

Mr. Stewart: For a minute, I do.

Trial Examiner Norwood: All right. Five minute recess.

(A short recess was had.)

ROBERT GARLAND was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

Direct Examination by Mr. MacIntyre.

Q. Have you given the Reporter your full name?

A. Robert Garland.

Q. What is your business and occupation, Mr. Garland?

A. Manufacturer.

Q. Manufacturer of what?

A. Garland Manufacturing Company.

Q. What is your position with that company?

A. At the present time manager for trustees. Formerly president.

Q. Over what period of time were you president?

A. A matter of about over 35 years.

Q. Up to what date?

A. Up to 1936.

Q. And you have been manager for trustees since that date?

1473 A. Manager for trustees since 1940.

Q. Since 1940?

A. Yes.

Q. What date in 1940?

A. March.

Q. And who managed the company during the period from 1936 to March, 1940?

A. I did.

Q. So you have managed the company from 1936 to date?

A. Yes.

Q. And up to the time that you had the management of the company as manager, you were president of the company for 30 years?

A. Off and on, most of the time.

Q. Well, for how many years consecutively were you president?

A. Well, I was president for at least 30 years, president. My brother was president for a while, but he died. I was president for, say, over 25 years.

Q. Consecutively?

A. Yes.

Q. Up to 1936?

A. Yes.

Q. And have since that time been manager?

A. Yes.

1474 Q. Does Garland Manufacturing Company manufacture anything other than rigid steel conduit?

A. Conduit only.

Q. Where is its plant located?

A. West Pittsburgh, Lawrence County, Pennsylvania.

Q. How many miles from downtown Pittsburgh is it located?

A. Between 50 and 55 miles. About 55.

Q. And over what territory do you make sales and shipments of conduit, Mr. Garland?

A. At the present time, you mean?

Q. Well, say as of January, 1941.

A. Why, we sell all over the country except the Pacific Coast.

Trial Examiner Norwood: Off the record a minute.

(Discussion had off the record.)

Trial Examiner Norwood: On the record.

By Mr. MacIntyre:

Q. Do you make sales and shipments of conduit to various United States possessions, such as the Panama Canal Zone—that isn't really a possession—and to Porto Rico?

A. Yes, we handle export business.

Q. What, if anything, Mr. Garland, have you had to do as president of your company and as manager of it, in the preparation, publication, and distribution of price cards issued by your company for the trustees?

1475 A. I never originated any price card. That is, my company never did, never originated one.

Q. You have issued certain price cards?

A. We have issued them, yes.

Q. What have you had to do with the preparation?

A. Nothing whatsoever.

Q. (Continuing.) Of the cards that you have issued?

A. The cards we have issued, nothing. We simply see what a price is that is put out, we hear of it, and without any collusion or anything of that kind, we follow or we don't follow it. Just as the case may be. We follow a good many cases, and other times we don't follow it.

Q. Well, in the light of what you have said, do we correctly understand you to say—to mean that you note what price cards your competitors issue, and you adopt those, instead of making up some of your own and have duplicates of them made over your name, and send them out?

A. When we get acquainted with the fact that a new card is issued, by seeing it somewhere, or hearing of it from some of our agents, why, we will probably get out—we will get out the card in order to meet prices. But that doesn't mean to say that we stick to that card at all times.

Q. I am asking you about putting out the cards now. You just merely adopt what they put out on their card, when you put yours out?

1476 A. We adopt it in a good many cases. Other times we don't.

Q. Can you tell us about those instances where you have not adopted it?

A. Just recently a card was put out that we didn't adopt. Probably some manufacturers—

Q. What card is that?

A. I think it is 85.

Q. How recently was that put out?

A. I can't recollect the exact date within a year. Anyway, several months ago.

Q. It was since January, 1941, is that correct?

A. I would say so, to the best of my recollection.

Q. What other cards have you noted that your competitors put out that you did not adopt?

A. Well, there has been a card put out recently making higher prices on large size conduit, that we didn't adopt.

Q. Well, that is card 85, isn't it?

A. I imagine so.

Q. But I am talking about cards previous to that. Can you cite any instance where you—

A. Sometimes when cards were put out—I couldn't give you the exact date—when a new card was put out, and it wasn't respected to any particular extent, and deviated from, and we probably didn't put out a card, we just simply notified our people what we would sell at.

1477 Q. That is, you would meet the prices of your competitors?

A. If we felt like doing it, or try to get a higher price. We have gotten higher prices in many cases. Especially on our consigned stocks.

Q. Do you remember, Mr. Garland, the situation at the time that card 72 was issued by your company and your competitors during March, 1936?

A. That was a low price card?

Q. Reducing the price from 28 to 25%.

A. I remember that. Rather drastic.

Q. What effect, if any, did that have upon your company's ability to continue business?

A. Well, it didn't have a very good effect. I think we lost some money during that period. I think most of them did. I am pretty sure we did.

Q. Is your company one of the small companies in the industry?

A. It is about the smallest. I don't know about Clifton Conduit Company. Of course, they are not manufacturers. But I guess we rank down in the lower brackets, as they say.

Q. And just previous to the time that card 72 was issued, during March, 1936, would you say that you deviated to some degree from card 71 which had been in effect?

A. I think we have deviated without regard to the
1478 card number, I think we deviated in most cases from cards. There are some cards we refuse to sell at.

Q. But you would say you had deviated from card 71, which was in effect just previous to the issuance of card 72?

A. We probably did.

Q. Well, can't you tell us whether you have some recollection of the general circumstances obtaining at that time?

A. No, I don't, because I don't make the quotations. I am simply in a supervisory way. The quotations are all made from our other office, factory office. I just have a general knowledge.

Q. Well, your general knowledge is to the effect that you had deviated from card 71 just prior to card 72?

A. I would say generally speaking we deviated in many cases.

Q. And that would include card 71?

A. The cards are simply a kind of a hope for a price, the way I would look at it, and we sometimes got it, and other times we didn't get it.

Trial Examiner Norwood: Was that the substance of things hoped for?

The Witness: The what?

Trial Examiner Norwood: The card is the substance of things hoped for?

The Witness: Yes, and the evidence of things not 1479 seen.

By Mr. MacIntyre:

Q. You would say that you had deviated from this card 71?

A. I think in all of the years we have been in business I never knew a card that wasn't deviated from.

Q. By your company?

A. By all companies.

Q. You can't speak for your company with certainty?

A. I speak for my company. I know everything that goes on; I telephone four, five times a day; I generally have to make the decision; they can't do much without me; people in the office call up; a lot of telephoning business and all that sort of thing. I never knew a price to be maintained in the conduit business.

Q. Now, coming back to the price cards themselves, you have seen, I believe you have already told us, the price cards of your competitors, and of course you see your cards, that you have just said, and none of them are issued with-

out you knowing it, and you are, therefore, acquainted with the stated method in your cards for figuring delivered price quotations on the basis of the Pittsburgh and Chicago basing point price?

A. We do that.

Q. And you know that the cards of your competitors carry provisions for figuring delivered price quota-

1480 tions in a similar way; is that right?

A. I imagine they do. We don't always do it—

Q. I am talking about what the cards provide.

A. The cards provide for that, yes. If we print a card after having seen a competitor's card, we follow the practice.

Q. And, of course, you followed it with knowledge that your competitors had that provision for figuring such prices?

A. Whether they did it or not, I don't know.

Q. You know their cards carried the provision for figuring prices in that way?

A. And the supposition it was carried out. We don't, in all cases, figure delivered price. We sell FOB Pittsburgh and let them pay the freight.

Q. I'm asking you now about the cards. Have you ever seen any cards put out by your company or any of your competitors which provided for any other method of determining delivered costs, except on the basis of Pittsburgh and Chicago basing point prices plus freight from those points?

A. I don't know that I have.

Q. You can't recall any at this time?

A. No.

Q. That you have ever seen?

1481 A. No.

Q. You do recall the fact that as to all sales, which are made in accordance with the cards as published, result in your competitors in taking different amounts from your customer's FOB—that is, nets at your mill—depending on whether you sell in the territory adjacent to your mill or in territory adjacent to the Chicago basing point price; is that correct?

A. I tell you how we do on that. We use the Chamber of Commerce there every now and then for actual freight rates. Sometimes the freight rate in the schedule is wrong. We don't go by it entirely.

If we get an order for a carload from some unknown place—it may be Alcoa, or some of these new cities or towns growing up at the present time under the Government, we get our own rate, and we use that rate and don't go by any schedule. We don't go by Donley or National Tube or anybody else. As a matter of fact, we get National Tube freight rate schedules right along, for 30 years. We go as much by that as by Donley's. We get Donley's also, but we get our own rate and verify it.

If we find a rate for Alcoa Aluminum Company, where we get some business, if we find the rate is actually lower, that is, lower than the rate of Donley, or anybody else, we use that lower rate, and don't care about Donley or
1482 anybody else, and maybe we will get the order on that basis.

Trial Examiner Norwood: You use that rate in quoting, you say?

The Witness: Yes, sir, and executing an order.

By Mr. MacIntyre:

Q. Have you noticed differences in rate which are computed by Mr. Donley and the rates which are computed and furnished to you by the National Tube Company, or the railroads?

A. Not always the same.

Q. There are differences in them?

A. There are times, lately, the last few years, when you ship to some new destination—we will say some new town or new city, almost a city, going up under the Government—why, we find that rates are different because there is a matter of trucking comes in.

We find that in our own country, Alleghany County. We found we could beat the rate by shipping to a certain point on a different railroad than Harrisburg mentioned, in asking for the quotation. We found, by looking over the ground out there, that we could ship to a little town where there was less trucking and to ship to the town that was designated we used that little town and we got the business.

Q. You would get a lowered delivery transportation?

A. Yes, lowered trucking added to freight. It often
1483 happens that way. We are not hidebound on using Donley.

Q. But if you had used him in that particular instance?

A. Might have lost the business. If Donley gives a

better rate than we get from some other source, we use his, but we will use the lower rate to get the business.

Q. But you will find, frequently, that the rates he gives you are different from those you can get from the railroads?

A. Especially with new business that are not really on the map.

I don't like my competitors to know that I do have those, but I do.

Q. And on these rates which vary, that is, those that Mr. Donley gives you, as compared with those, or distinguished from those which you get from railroads, that frequently occurred—that is, those differences frequently occurred when store door delivery was involved?

A. No, not particularly. In some cases of store door delivery, yes. I don't want to say anything against Mr. Donley. We use his freight rates in most cases, but I will say we deviate from them a great deal.

Q. In using other rates?

A. Getting a lower rate.

Q. But you use his service?

A. Yes.

Q. And use his rates?

1484 A. Yes; mostly.

Q. And you have used them over what period?

A. Oh, I don't—four or five years, anyway. I don't recollect just when we started business with Donley. Probably the same as the other manufacturers.

Q. Now, isn't it a fact, Mr. Garland, that you received larger amounts for the same quality and quantity of conduit from your customers nearer your plant here in Alleghany County than you do from other customers of yours who are located near Chicago?

A. Oh, yes. As a matter of fact, we do. I can't deny that.

Q. And you do that because of the method of quoting prices that you use; is that correct?

A. I don't know about that. We sell on FOB Pittsburgh basis.

We have to truck that material from our plant. That costs us quite a lot.

Q. When you sell to the customer in Alleghany County by rail from your plant—

A. We don't sell them by rail.

Q. What about the customer in Wheeling, West Virginia? You sell him by railroad, don't you?

A. Yes.

Q. And you collect from him a larger amount net
1485 at your mill than you do from your customers in the Chicago district?

A. Yes, we have some advantages there, and then that's offset by disadvantages other places, like quoting against Walker Brothers, Conshohocken and Philadelphia, and all that. That is due to geographical location.

Q. But this fact of getting a larger amount from your customer located, say, at Wheeling, West Virginia, than you get from a customer, say, located near Chicago, results from your use of your method of figuring prices?

A. Well, we add the freight that we are shipping to those far points. We add the freight and sell FOB Pittsburgh, really, to all of them.

Q. But it results from your method of figuring prices, such as are outlined on your price card, isn't that correct?

A. I don't know. It is FOB Pittsburgh in all cases.

Trial Examiner Norwood: It results in the practice of adding freight, does it not?

The Witness: Yes, you add freight, but you put it on your bill.

By Mr. MacIntyre:

Q. You add freight to the Pittsburgh basing point price to the man in Wheeling?

A. Yes.

1486 Q. Now, what do you do to the man in the Chicago territory? You don't add the Pittsburgh freight to his cost?

A. No.

Q. Why don't you?

A. If some of our competitors are doing it that way—

Q. I say, the reason you get different amounts from those two customers, the one in Wheeling and the one near Chicago, is because of your use of your method in figuring prices; is that correct?

A. Yes.

Q. Have you held any position as an official of the Rigid Steel Conduit Association?

A. Never. I was offered the treasurership one time and I didn't accept.

I was a member of the City Council in Pittsburgh during most of the time. That took up all my time.

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Q. The treasurership was the only thing that was ever offered you?

A. Well, it was offered me, yes, because Pittsburgh was a central point. That was the only one, yes. I wouldn't recall that—I may have been offered other things, but I was a member of the City Council here—Republican member of the City Council, of which I am very proud—and that took a lot of my time. No, I don't remember—don't recol-
1487 lect ever having been offered any other. I am not one of the officials.

Q. Now, you spoke a few minutes ago about the operation of this method of figuring prices and what effect that it had upon your business and another competitor, that of Walker Brothers. Do you recall that?

A. If we didn't have our present practice, why, Walker would walk away with all the Philadelphia business.

Q. And why—

A. It is a very large territory.

Q. And why would he be able to do that?

A. Because he buys his pipe from Bethlehem.

Q. From where?

A. Sparrow's Point, and Bethlehem brings in Spanish ore from Cuba, and can beat most anybody else in making pipe, and if he gets his present pipe at Bethlehem for his manufacturing at Conshohocken, he will take all the Philadelphia trade, and it costs about $6 a ton to compete with him and Mohawk, and take a lot of New York business from us, which is a larger territory.

Q. That is the Cohoes Rolling Mill?

A. Yes.

Q. Selling Mohawk Tube brand?

A. Yes.

I am a great believer in this FOB Pittsburgh, be-
1488 cause it equalizes.

Mr. MacIntyre: I didn't hear the last answer. Will you read it.

(Last answer read.)

By Mr. MacIntyre:

Q. That is, equalizes as between you and your competitors?

A. Yes. Of course, the customer comes first; competitor second.

Q. But your interest in this equalization is between you and your competitors, nevertheless?

A. That equalization has been going on for years, or before the FOB Pittsburgh price was established.

Q. But the basing point method which you are using and which you have described helps in maintaining that equalization?

A. I think so. It has been used for many years, and there is some wisdom about it.

Mr. MacIntyre: I believe that's all.

Mr. Stewart: That's all.

Cross-Examination by Mr. Robison.

Q. When did your company first begin the manufacture of rigid steel conduit?

A. We are the oldest manufacturers in the world of rigid steel conduit; 1897. Before that there was a 1489 brass conduit with paper lining.

Q. We are to understand you, then, that prior to your beginning the manufacture in 1897, there was no manufacturer of rigid steel conduit in this country?

A. No rigid steel conduit, no.

Mr. Robison: That's all I have.

Trial Examiner Norwood: You are excused.

(Witness excused.)

Trial Examiner Norwood: We will adjourn at this time to reconvene at 10 o'clock A. M., tomorrow morning.

(Thereupon, at 4:30 o'clock P. M., an adjournment was taken, to reconvene on October 22, 1941, at 10 o'clock A. M.)

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of Volume I of the Printed Record, being one of 5 volumes of said Printed Record filed on May 13, 1947, in:

Cause No. 8642.

Clayton Mark & Co., *et al.*,

Petitioners,

vs.

Federal Trade Commission,

Respondent,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 20th day of October, A. D. 1948.

Kenneth J. Carrick,

(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*